



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL APPEAL NO. 234 OF 2010

JULIUS NGUMBAO MWENGEI APPELLANT/APPLICANT

VERSUS

AL KARIM BADRUDIN SUNDERJI RESPONDENT/RESPONDENT

(Being an appeal from the Ruling of the Senior Principal Magistrate A.K.. Ndung'u Esq delivered on the 18th June 2010 in CMCC 2790 of 2010 at Milimani Commercial Courts Nairobi)

RULING

I. BACKGROUND

1. An application had been filed in the subordinate court whereby the appellant original plaintiff sought that court's order to be granted an injunction restraining the respondent, his landlord from interfering with his full possession of the suit premises and levying distress on

LR R209/30/10.

2. The subordinate court declined to grant orders of injunction by its decision delivered on 18th June 2010. The appellant/original plaintiff filed appeal on 22nd June 2010 against that ruling and filed a similar application to this High Court.

3. The High Court granted the notice of motion of 22nd June 2010 but gave conditions to the orders of injunction that was granted to them on

16th June 2011.

4. The condition was that as of

“February 2010 The appellant [deposits] ... all the rents into court until the appeal is heard and determined.”

5. The applicant appellant filed an application seeking review of this order.

II PROCEDURE

6. Sitati J, who had given the orders, has been transferred from the Nairobi station. The law requires that the same judge handles their review matter unless they have been transferred or are unable to do so for good cause.

7. I took over this matter under Order 18 Civil Procedure Rules.

III REVIEW

8. The tenant had always paid his rent to M/s Onit Ltd. If he now required to pay rent to court and to pay to M/s Onit Limited it would be a hardship.

9. The issue that would be involved is that there is no relationship of landlord/tenant between the parties.

10. The application was opposed on grounds that there was no a new matter raised, mistake or error.

11. The issue raised by the appellant, one matter that was not in the knowledge of the former Hon. Judge who handled the application. The orders would have been different if new information had been given.

12. I hereby allow the application. The orders of Sitati J are hereby varied to read that the rents are not to be deposited to court but are to be paid to landlord M/s Onit Limited and when it falls due.

13. If per chance M/s Onit Limited are different from the respondent Al Karim Badrudin Sunderji, then the parties are at liberty to apply.
Costs to the appeal.

DATED THIS 4TH DAY OF OCTOBER 2011 AT NAIROBI

M.A. ANG'AWA
JUDGE

Advocates :

iii) *S M Mwaniki instructed by S M Mwaniki & Co Advocates for the Appellant/original plaintiff*

iv) *M Owuor instructed by M/s Owuor & Co Advocates for the Respondent/original defendant*