



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 490 OF 2011

JOHN MUINDE MATIKU PLAINTIFF
=VERSUS=
RUMAD ENTERPRISES LIMITED DEFENDANT

RULING

By way of a Notice of a Notice of Motion application dated 6th September 2011 brought under Certificate of Urgency seeking orders that:

“3. The Defendant either by themselves, servants and/or agents be stopped by permanent injunction from alienating disposing off or interfering in any manner with the Plaintiff’s quiet enjoyment of the suit premises known as Plot No. 1109/VI/MN and/or attaching the Plaintiffs goods until hearing and final determination of this suit”

This court did on 8th September 2011 grant the orders sought on an interim basis. Thereafter the Respondents also filed a Notice of Motion under Certificate of Urgency seeking that the orders issued by this court on 8th September 2011 be set aside. Both applications were heard together on 4th October 2011. **MR. MKAN** Advocate appeared for the Applicants whilst **MR. KHATIB** acted for the Respondent.

This dispute revolves around rental of the property known as Plot No. 1109/VI/MN (hereinafter referred to as ‘the suit premises’). The Respondents claim that rent arrears amounting to Kshs.4.2 million are due and owing for the suit premises and have proceeded to proclaim as against the Applicant who is in occupation of the premises. On their part the Applicant claims that rent is fully paid up to date and further claim that the suit premises does not belong to the Respondent but belongs to Beauty Collections Limited who are the registered proprietors thereof. I have seen the certificate of postal search dated 31st May 2011 upon which the Applicant rely to buttress their claim that the Respondents are not the registered owners of the suit premises and therefore have no right to claim rent from the Applicants. Mr. Khatib for the Respondent submits that the Applicant’s whole claim is based on a fraud.

I have carefully considered the submissions made by both counsel. Mr. Khatib made reference to **HCCC 292 of 2007 (O.S.)** whose subject matter was the suit premises. This case was not brought to the attention of this court at the time when the interim orders were being sought. In his judgement dated 20th May 2011 my learned brother **Hon. Justice M.K. Ibrahim** did find that the suit property rightfully belonged to **Rumad Enterprises** (the Respondent herein) and did order issuance of a vesting order to the Respondent. I have no doubt that had this fact been disclosed then this court would not have made the interim orders which it did on 8th September 2011. I find that those orders were obtained by non-disclosure of material facts. As such I hereby review my orders of 8th September 2011 and set aside the

same. In other words the Respondent's application dated 17th September 2011 is hereby allowed in terms of prayer 2 thereof. Costs in the cause.

Dated and Delivered in Mombasa this 30th day of November 2011.

M. ODERO
JUDGE

In the presence of:

Mr. Khatib for Defendant/Respondent

No appearance for Plaintiff/Applicant