



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 575 of 2009**

**EDDY AHUGA LIHASI .....PLAINTIFF**

**V E R S U S**

- 1. REV. STEPHEN KANYARU M'MPWII**  
**2. SALOME NKATHA .....DEFENDANTS**

**R U L I N G**

The Plaintiff's suit herein against the Defendants is for damages on account of **unlawful arrest** and **false imprisonment**. He also seeks a declaration and a permanent injunction. His case as pleaded in the plaint dated 23<sup>rd</sup> October 2009 is that on 17<sup>th</sup> September, 2009 he was unlawfully detained for 30 minutes by the 2<sup>nd</sup> Defendant upon instructions of the 1<sup>st</sup> Defendant at the "Methodist Ministry Centre" in Lavington, Nairobi where he had gone to serve process in a certain case. He is a process server of this court.

Together with the plaint the Plaintiff filed **chamber summons dated 23<sup>rd</sup> October, 2009** in which he seeks a temporary injunction to restrain the Defendants from

**"...arresting, detaining, obstructing, restraining or in any way whatsoever interfering with the Plaintiff's discharge of his duties as a process server..."**

pending disposal of this suit. That application is the subject of this ruling.

The application is brought under **Order 39 rules 2, 2A and 9** of the **Civil Procedure Rules** (the **Rules**). **Section 3A** of the **Civil Procedure Act, Cap 21** (the **Act**) is also invoked. The application is supported by the Plaintiff's affidavit annexed thereto.

The Defendants have opposed the application as set out in their respective replying affidavits. There is a supplementary affidavit sworn by the Plaintiff in response to the replying affidavits.

I have read the supporting and replying affidavits. I have also considered the written submissions filed on behalf of the parties, including the authorities cited. Finally, I have perused the plaint, the defence and the reply to defence.

This being an application for temporary injunction, it must be decided upon the principles set out in the well known case of **GIELA –Vs- CASSMAN BROWN [1973] EA 358**. Those principles are:-

1. The Plaintiff must establish a *prima facie* case with a probability of success.
2. The Plaintiff must demonstrate that he will suffer irreparable loss unless the temporary injunction sought is granted.
3. If the court cannot decide the application upon those two principles, it will decide it on a balance of convenience.

Before I apply those principles to the circumstances of this case, let me deal with the issue of jurisdiction raised by the Defendants. It has been argued that this court lacks jurisdiction to hear both this application and the suit

**“as it is the chief magistrate’s court which would have jurisdiction since, on the face of it, the incident giving rise to (the) action is of very small magnitude...”**.

With respect, this submission lacks seriousness. It has not been suggested by the Defendants that any damages that the Plaintiff might be awarded were he to succeed in his claim would be well-within the pecuniary jurisdiction of the chief magistrate’s court. In any event, it may be the Defendants’ view that the incident giving rise to the cause of action was of a “very small magnitude”. On the other hand, the Plaintiff might have viewed the incident as a very serious violation of his constitutional right to liberty and a gross interference with his work as a process server of this court, and hence the need to bring his suit before this court. I find no substance in the challenge to this court’s jurisdiction.

**Has the Plaintiff demonstrated a *prima facie* case with a probability of success?** The Defendants have not denied that the Plaintiff was indeed somehow detained in their premises. They have pleaded extensively in their statement of defence that it was the Plaintiff who detained himself by not pressing a button on the wall to open an electronically locked door. It has not been pleaded that anyone brought this button to the attention of the Plaintiff.

The Plaintiff has further pleaded that he was detained by the 2<sup>nd</sup> Defendant upon instructions of the 1<sup>st</sup> Defendant. The Defendants have denied this. They have further pleaded that since the detention took place in the premises of the **Methodist Church in Kenya Trustees Registered**, the Plaintiff should have sued that entity and not the Defendants. As far as the Plaintiff is concerned, he was detained by the 2<sup>nd</sup> Defendant upon instructions of the 1<sup>st</sup>

Defendant; he was not detained by the Methodist Church in Kenya Trustees Registered. I find, *prima facie*, that the Plaintiff has sued the right persons.

Regarding the merits or demerits of the Plaintiff's case, it shall ultimately depend on the evidence placed before the trial court. The merits or otherwise of the Plaintiff's case cannot be judged upon the evidence that has been extensively, and wrongly, pleaded in the statement of defence. Looking at the plaint and the defence now on record, I am satisfied that the Plaintiff has established a *prima facie* case with a probability of success.

**Will the Plaintiff suffer irreparable loss unless the injunction sought is granted?** I think not. To begin with, the Plaintiff's apprehension of further detention by Defendants is speculative. He may or he may not be required to further serve process at the premises where he has alleged he was detained. The advocates in the cases mentioned might well hire some other process servers. In any event, the main remedy in cases of unlawful arrest and false imprisonment is damages. Where in any action the main remedy is damages it cannot be said that a party stands to suffer irreparable loss.

The Plaintiff having failed to meet the second test for granting an order of temporary injunction, his application is without merit and is herewith dismissed. Parties shall bear their own costs of the application. It is so ordered.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2010**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 12<sup>TH</sup> DAY OF FEBRUARY, 2010**