



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Civil Case 69 of 2010**

**HASHAM LALJI PROPERTIES LTD ..... PLAINTIFF**

**-VERSUS-**

**VERONICA WANGOI KARAHO.....DEFENDANT**

**RULING.**

Simultaneously with the Complaint dated 12th May 2010 and filed in court on the 13<sup>th</sup> May 2010 the plaintiff/applicant took out a notice of Motion stated to be brought under the provisions of S.3A of the Civil Procedure Act and orders XXXIX Rules 1,2 and 9 and L rule 1 of the Civil Procedure Rules. That application was brought under a certificate of urgency. The prayers sought a temporary injunction restraining the defendant respondent from continuing with the construction of any building and/or structures and/or putting any tenants in any building/structure constructed by her on the plaintiff's land parcel number Eldoret Municipality Block 6/64 and a mandatory injunction directing the defendant to demolish all the buildings and structures she erected on the said parcel of land belonging to the plaintiff. The grounds in support of the application are, in the main, that the plaintiff is the landlord and the defendant is the tenant in the suit land who has no consent from the landlord to erect any buildings or structures, thereon. The affidavit in support of the application is sworn by one Stephen Ndalo described as the administrator of the plaintiff which affidavit repeats on oath the grounds which the application is based on and the averments in the plaint.

In reply and opposition to the application the defendant/respondent swore an affidavit that she is not undertaking any construction whatsoever on the plaintiff's land and she knows well enough that she is a mere tenant who has never

pretended to be owner of the suit land. Further she adds that the real issue is not really ownership of the suit land or any construction going on thereon as there is no such construction but that the landlord plaintiff is intend on evicting the defendant tenant by all means possible and there are previous court proceedings in this court for eviction and also before the Business Premises Rent Tribunal between these two parties herein. The respondent swore that all she did was to undertake repairs of the existing premises at her cost as the plaintiff/applicant flatly refused to do that. Submissions by both Counsel herein appearing for their respective clients were reiterating the above.

For the plaintiff to succeed it must show that he has a prima facie case with a probability of success at trial. That it will suffer irreparable damages not capable of being compensated by an award of damages and that the balance of convenience lies with him. Those are the basic guiding principles for the Grant of a temporary injunction.

I have carefully perused all the pleadings herein and considered the rival submissions by both counsel. There was no supplementary or further affidavit filed to controvert what was stated in the respondent's Replying Affidavit. There was no submission to deny and/or controvert the same. The averments therein as to repairs and existing sub – tenant then must be taken as true. It appears then quite clearly that what is happening herein is a landlord – tenant disagreement that has absolutely nothing to do with the ownership of the suit land and/or any new constructions said to be undertaken by the Respondent. In these circumstances I do not find that the plaintiff/Applicant has made out a *prima facie* case with a probability of success at the hearing of the same. And nothing being done by the respondent is incapable of not being adequately compensated by an award of damages. The balance of convenience lies with the tenant who is up to date with the rent payment and who is in occupation. I would respectively suggest that the real issues between the parties herein be resolved at the right forum. This application lacks merit and I dismiss it with costs.

It is accordingly so ordered

**DATED SIGNED AND DELIVERED AT ELDORET THIS 21<sup>ST</sup> DAY OF JULY, 201**

**P.M. MWILU**

**JUDGE.**

In the presence of

**Gicheru** Advocate for plaintiff / Applicant

**Achach** Advocate for Defendant/ Respondent

**Paul Ekitela – C/C**

**P.M. MWILU.**

**JUDGE.**