



1. Land Law
2. Commercial Law.
3. Civil Practice and Procedure
4. **Subject of main suit**
 - a. Lease agreement to LR Eldoret LL12186
 - b. Application for injunction dated 14th April 2008 granted on 29th April 2009 restraining the defendant from evicting plaintiffs from premises till determination of suit.
 - c. The defendant levy distress on plaintiffs property namely motor vehicle Registration No. KAT 475U Mitsubishi on 31st August 2010
 - d. Reasons decretal sum of Kshs.3,720,000/-
5. Application 3rd September 2010
 - i) Prayers for release plaintiffs motor vehicle KAT 475U
 - ii) Distress of rent not applicable
 - iii) 3rd defendant to pay costs.
 - iv) Advocate deny knowledge of levy of distress
6. Reply by Defendant 2 and 3
 - a) Defendant No. 2 - orders do not compel levy distress
 - b) Defendant No. 3 - to pay costs
 - c) Served but absent during interparte hearing.
7. Held:
 - i) Injunction was confirmed and in place.
 - ii) Levy of distress, trading on issue in question namely rent is not applicable herein.

iii) Orders granted – pick up to be released

8. Case Law

9. Advocates:

A. Kitigin an Advocate from the Firm of M/s. Angu Kitigin & Company Advocate for the Plaintiff - Present

N. Marube an Advocate from the Firm of M/s Marube & Company Advocates for the 1st Defendant - Absent

R. Omboto an Advocate from the Firm of M/s Omboto & Company Advocates for the 2nd Defendant - Absent

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL SUIT NO. 32 OF 2008

BHUPENTRA TAILOR.....	1ST
PLAINTIFF	
JITENDRA TAILOR T/A SOY SAFARI RESORT.....	2ND
PLAINTIFF	
VERSUS	
SOY COUNTY CLUB (1987) LIMITED.....	1ST
DEFENDANT	
JASSON KOSKEI.....	2ND
DEFENDANT	
ASSIS HOTEL LIMITED.....	3RD
DEFENDANT	

RULING

I. Background

1. The subject of the main suit, yet to be heard before this court, concerns a lease agreement between the plaintiff and the 1st defendant, M/s Soy County Club (1987), for 8 years. Unknown to the plaintiff, the property in question LR 12186 was then sold to the 2nd Defendant Jasson Koskei, (later the plaintiff was amended to Assis Hotel Limited on 30th April 2008)

2. On the apprehension that they, the plaintiffs would be evicted they filed the present suit on 14th April 2008 and sought for orders of injunction that was granted to them ex parte on 17th April 2008 (Ibrahim J.) The inter-parte hearing was not heard until 28th April 2010 (Ang'awa J) and the ruling delivered on

29th April 2010. The court granted the orders of injunction in favour of the plaintiff against the defendants who were present in court through their advocates.

3. It seems the parties took no further action as to the discovery and practical requirements under LN8167/08. It therefore transpired through an application of 3rd September 2010 that the plaintiff's vehicle was attached. This attachment is the subject of this ruling.

II. Application 3rd September 2010

4. The Applicant/Proprietor of the plaintiffs resort informed the court through his affidavit that he was accosted at a municipality market on 31st August 2010 by RonBoy Agencies Limited representative. There he was informed that he was in arrears of rent and as such the said vehicle was being attached for non payments of rents. A sum of Kshs. 3,720,000/- was being claimed.

5. The plaintiffs/applicants prayed for orders through the application of 3rd September 2010 for the release of the said vehicle. This application was filed during the court vacation when this court was on leave. There was no judge available at this station and as such the Deputy Registrar correctly directed that the matter being urgent should be heard. The file went before Karanja J on 7th September 2010 Judge of the High Court at Kisumu. Temporary orders were issued and interparte hearing directed for 20th September 2010.

6. The advocate for Defendant 1 and 2 failed to attend court having been duly served.

III. Argument before Court

7. It was argued by the applicant through his advocate that he had orders of injunction given by this court protecting him from any adverse action by the defendants pending the hearing of the main suit. The said defendants proceeded to attach his vehicle when in fact the levy of distress of rent was not applicable herein. He prayed that orders be given to have his vehicle released.

8. There was filed ground of apposition and a replying affidavit by the Defendant 2 and 3 respectively. Defendant No. two in his replying affidavit argued that the issue of ownership had first arisen. That the levy of distress did not mean the eviction of the plaintiffs from the premises. There was no order given by the court nor to levy distress for the rent. Defendant No. 1 on the other hand, merely stated that the whole process was an abuse of the court process.

IV. Findings.

9. The whole suit, which requires to be heard in a full trial centers around a lease and most importantly, its terms. Namely a lease for eight years was agreed upon at a rent paid in advance and in full at a sum of Kshs. 3.4 Million. This lease having been entered on May 2005 was to expire on 30th April 2013. It was therefore the arguments of the plaintiffs, he owes no arrears of rent. The premises was allegedly sold without his lease being terminated in order to enter into a new lease with the new owner. All this is a matter of evidence.

10. Pending the hearing of the main suit this court granted orders of injunction in order that parties may hear the full trial without any adverse actions being taken against either parties.

11. By levying distress on the assets of the Plaintiffs/Applicant the defendants/respondents did indeed act contrary to the courts orders of injunction.

12. I find that this application must succeed. The orders of injunction is reaffirmed. The said motor vehicle registration KAT 475U Mitsubishi Pick Up which is in the possession of M/s RONBOY Agencies Limited be forthwith released to the Plaintiffs/Applicant.

13. I further make orders that the auctioneers costs, the costs of this application be borne by M/s Asis Hotel Limited, noting that Jasson Koskei - is no longer on record in this matter having been substituted by M/s Asis Hotel Limited.

Dated this 29TH ,day of September 2010 at Eldoret

M.A. ANG'AWA
JUDGE

Advocates:

A. Kitigin an Advocate from the Firm of M/s. Angu Kitigin & Company Advocate for the Plaintiff
N. Marube an Advocate from the Firm of M/s Marube & Company Advocates for the 1st Defendant
R. Omboto an Advocate from the Firm of M/s Omboto & Company Advocates for the 2nd Defendant