



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**(MILIMANI LAW COURTS)**

**Civil Suit 234 of 2010**

**JULIUS NGUMBAO MWENGEI.....APPELLANT**  
**VERSUS**  
**ALKARIM BADRUDIN SUNDERJI.....RESPONDENT**

**R U L I N G**

1. What is before me is a notice of motion brought under Section 80 of the Civil Procedure Act. The respondent, Alkarim Badrudin Sunderji, seeks to have the interim order of injunction made on 22<sup>nd</sup> June, 2010, reviewed and the respondent allowed to continue to collect rent. In the alternative the respondent prays that rent be deposited in court pending the hearing and finalization of the appeal.
2. The application is anchored on grounds stated on the motion as well as the affidavit of the respondent's counsel, Michael Owuor. In the affidavit, counsel for the respondent depones to facts giving rise to the application. He complains that the interim injunction restraining the respondent from levying distress for rent has caused substantial loss to the respondent and that the appellant has not provided any security. He is also apprehensive that he may not be able to recover the loss.
3. The application is opposed through an affidavit sworn by Firoze Hirani on 25<sup>th</sup> August, 2010 and another affidavit sworn by Julius Ngumbao on 6<sup>th</sup> September, 2010.
4. I have considered the application as well as the affidavit in support and in reply. I have also had the opportunity to peruse the court record. I do note that the order sought to be reviewed was issued on 22<sup>nd</sup> June, 2010 pursuant to an application made on the same date. The initial order was an interim order of injunction lasting until 30<sup>th</sup> June, 2010, when the application dated 22<sup>nd</sup> June, 2010, was to be heard inter-partes. On 30<sup>th</sup> June, the hearing of application was adjourned to 7<sup>th</sup> July, 2010, and the interim orders extended to that date. On 7<sup>th</sup> July, 2010, the application dated 22<sup>nd</sup> June, 2010, was partly heard and stood over to 21<sup>st</sup> July, 2010 for further hearing, the interim orders being extended. The orders were further extended to 27<sup>th</sup> July and then extended again to 3<sup>rd</sup> November, 2010. Therefore as at the time the respondent brought his application, that is 26<sup>th</sup> July, 2010, the interim orders were still in force.
5. The position as of now is that the interim orders are still in force until 3<sup>rd</sup> November, 2010 when further hearing of the application dated 22<sup>nd</sup> June, 2010, is expected to proceed. It is not therefore correct as was submitted by the appellant that the interim orders are spent. It is evident that the issue of the ownership of the suit property is in dispute and it is on the basis of this that the appellant has obtained interim orders restraining the respondent from levying distress. Nonetheless, since the further hearing of the substantive application is coming up in about a week's time, it would be appropriate that the issues raised by the respondent be determined in the substantive application. I therefore order that the hearing of the application dated 22<sup>nd</sup> June, 2010, which was partly heard before my sister Hon. Sitati J. proceed before her on 3<sup>rd</sup> November, 2010, as scheduled and that the issues canvassed before me be raised before her for determination in the substantive application.

**Dated and delivered this 27<sup>th</sup> day of October, 2010**

**H. M. OKWENGU**  
**JUDGE**

In the presence of: -  
Wainaina for the appellant  
Owuor for the respondent/applicant  
B. Kosgei - Court clerk