



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

**Civil Case 325 of 2008**

**ASSORTED PROJECT LTD. .... PLAINTIFF**

**VERSUS**

**ISSAC COMMEY ..... 1<sup>ST</sup> DEFENDANT**

**LILIAN OFUSUA COMMEY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

(1) Assorted Projects Ltd., the Plaintiff in this case (“**the Tenant**”), runs a guest house in the Langata area called Karen Guest House. The land on which this facility stands Plot L.R. No.2259/430 (“**the suit premises**”), is owned by the two Defendants, Isaac Commey and Lilian Ofusua Commey (“**the Landlords**”).

(2) On the 5<sup>th</sup> September 2007, the landlords agreed to grant to the Tenants a lease of ten years over the suit premises for a term effectives from the 1<sup>st</sup> December 2007, at a quarterly rent of Kshs.840,000/= plus a deposit of the same amount.

(3) Barely six months into the term, disagreements arose over some deductions made on the rent by the Tenant being the cost of works and repairs which the Tenant had carried out on the suit premises. The Landlords disputed the Tenant’s right to make these deductions. The Landlords therefore decided to terminate the lease and obtain vacant possession. By letter dated the 9<sup>th</sup> June 2008 addressed to the Tenant and marked “**URGENT**” Robson Harris & Company, Advocates, (“**the Advocates**”), the Advocates for the Landlords, gave the Tenant notice to vacate the suit premises within fourteen days from the date of that letter.

(4) It was after receiving that letter that the Tenant filed a suit on the 19<sup>th</sup> June 2008, asking for an order of specific performance, an injunction restraining the Landlords from evicting it from the suit premises, and in the alternative damages for loss of income. On the same date, the Tenant filed an application seeking a temporary injunction restraining the Landlords from evicting it from the suit premises pending the hearing and determination of the main suit.

(5) The application was supported by the affidavit of Mr. Kiogora Mutai, the Managing Director of the Tenant and also by the grounds set out in the Chamber Summons. In ground (p), it is stated that any deductions made from the rent were made on the conviction that the Tenant was justified in doing so. And in ground (e) it is alleged that the landlords’ action were purely meant to defeat the rights of the Tenant under the Lease and to expose it to financial losses.

(6) There was a lengthy affidavit in reply dated the 8<sup>th</sup> July 2008, sworn by Pastor Isaac Commey. In paragraph 4, he deponed that the terms of the Lease as drawn were unfair, oppressive, vitiated by undue influence and amounts to unconscionable bargain, and he asks the court to nullify it. In paragraph 23, he alleges that the Lease was drawn by the Managing Director of the Tenant who also happened to be an Advocate. He goes on to say that the Lease contained unfair and oppressive terms which Mr. Kiogora did not bring to his attention and were never explained to him.

(7) In paragraph 24, Pastor Commey depones:

“(24). THAT I am advised by my Advocate,

Ashford Muriuki, which advice I verily believe that the Lease herein was obtained through undue influence, is an unconscionable bargain contract in which the Plaintiff/Applicant made an unconscientious use of his superior position, as an Advocate to my detriment and disadvantage when the Advocate drew the Lease.”

(8) In spite of all these serious allegations of undue influence, unconscionable bargain, undue advantage, etc., the landlords filed a Defence on the 15<sup>th</sup> July 2008, in which some of these allegations were repeated, but no counter-claim was raised asking the court to terminate the Lease on those grounds.

(9) Having received this evidence in conjunction with the submissions of both learned counsel and the host of authorities they have cited in support of their respective contentions, I have come to the conclusion that this is a case in which a temporary injunction must issue for two main reasons. First, the claim by the Tenant that the deductions made from the rent were justified is a serious point which must be canvassed and investigated fully at the trial. It cannot be dismissed out of hand on the strength of the denial by the Pastor. Secondly, I do not consider the letter from Robson Harris & Company Advocates, dated the 9<sup>th</sup> June 2008, to be a valid notice of termination of the tenancy.

(10) That being my view of the matter, I grant the application and in terms of prayer No.2 in the Chamber Summons filed on the 19<sup>th</sup> June 2008 hereby issue an order of injunction restraining the Defendants (the Landlords) by themselves, their servants or agents or otherwise from terminating the Plaintiff’s tenancy or evicting the Plaintiff from the suit premises or in any other way interfering with the tenancy and the Plaintiff’s right to quiet possession thereof pending the hearing and determination of the suit. The Defendants will pay the Plaintiff’s costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this Thirtieth day of January 2009.

**P. Kihara Kariuki**

**Judge.**