



1. Civil Practice and Procedure
2. Subject of main suit-
 - 2.1 Commercial Law.
 - 2.2 Landlord/Tenant Business Premises
 - 2.3 Unprotected Tenant
3. Application dated 25th March, 2009

3.1 Seeking orders of injunction restraining the defendants from attaching, removing, wasting plaintiffs goods on premises LR 631/1/11 Moi Highway – Kericho

3.2. Orders to released attached goods.

3.3. Distress of rent.

4. Application – not argued as advocate offers no submission.
5. Respondent prays the application be dismissed.
6. Held – application be dismissed.
7. Case Law – Nil.
8. Advocates.

W.R. Kiprono advocate from M/S W.R. Kiprono & Co. advocates instructed to hold brief for the applicant/plaintiff – present

I.O. Meroka advocate from M/S Meroka & Co. advocates from M/S Meroka & Co. advocates instructed to hold brief for M/S Masese and Nyamwange advocates for the Respondent/Defendant – present.

EXPRESS AUTOMOBILE (K) LTD PLAINTIFF

VERSUS

KENYA FARMERS ASSOCIATION LTD

LIFEWOOD AUCTIONEERS LTD DEFENDANT

RULING

Application for Injunction dated 25th February, 2009

I: Procedure

1. The applicant, M/S Express Automobile (*Ltd*) (*plaintiff herein*) are tenants to M/S Kenya Farmers Association Ltd (*defendant herein*) (*landlords*). The said landlord distressed for rent on premises owned by them being LR NO. 631/1/11 situated along Moi – Highway - Kericho at a monthly rent of Kshs 20,000/=.
2. The Plaintiff/Applicant filed suit on 18th February, 2009 through M/S Mitey & Associates (*advocates*) together with an application for an injunction filed on the 25th February, 2009 under a certificate of urgency. The said firm of advocate were referred to the High Court of Kenya at Nakuru as this Court was not sitting at Kericho but in Nairobi. At the High Court in Nakuru the Hon. Judge granted temporary prayers of injunction and security of Kshs. 50,000/= in the event the orders were obtained under a misrepresentation.
3. The Respondent/Defendant entered a memorandum of appearance and on 9th March, 2009 the party appeared before me.
4. The Plaintiff/Applicant was represented by Mr. W.R. Kiprono who held brief for Hon. Mr. Justice Mitey (*retired*) for the Plaintiff. The said advocate sought for time to put in a Supplementary Affidavit to the response received on the application. This court granted an adjournment to the effect that such leave to file a Supplementary Affidavit be given. In the meantime the suit premises would remain closed. The Plaintiff was to undertake through his advocate to amend the Plaint to include M/S CADS motors Ltd – the new proposed tenants as co defendants. Both parties agreed that there be an inter-parters hearing on 17th March, 2009 at 9.00a.m.
5. On 17th March, 2009 W.R. Kiprono notified this Court that there was a new advocate on record not before Court. It was not clear whether **order III r 6&7 cpr** was complied with as the respondents were not aware of this.
6. This court ordered that the matters proceed for hearing on the issue of the injunction and declined any adjournment. It did so on the grounds that the applicant most certainly was using indirect tactics to adjourn the matter after being given interim status quo to the premises and after being notified that there would be a proposed 3rd party. No amendment to the Plaint and nor an application to enjoin a new party had been made.

II: Application

7. The said advocate for the Plaintiff and so holding brief not only for Hon. Mr. Justice Mitey (*retired*) but for the proposed new advocate offered no submission to the application.
8. The Respondent prayed that the application be dismissed. The arguments between the parties was of rent. This was Kshs. 40,000/= per month but the plaintiff failed to pay these new rents. He prayed that the application be dismissed.

III: Opinion

9. The applicant herein does not seem to be serious in his application. There are no submission offered herein. I have the application before me which seeks for orders of injunction to restrain the defendant from levying distress due to non payments of rents. The applicant requires to demonstrate that he is a protected tenant under the Business Premises Rent Tribunal. In absence of two injunctive orders can be given only on the proof of what has been entered in the case law of **Cassman Brown case**. That there would be a probability of success, a prime facie case has been made but, that the defendant may suffer irreparable loss.
10. From the letter of 16th August, 2006, the plaintiffs/Applicant had been given a lease for five years

and three months with effect from 1st September, 2006 to 30th November, 2011 at a monthly rent of Kshs. 40,000/= as of 16th August, 2006 the plaintiff/applicant was to pay his rent quarterly in advance.

11. The issue herein concerns rent repayment at the rate of Kshs. 40,000/= per month and not Kshs. 20,000/= per month. If this is resolved then this would be able to settle this matter. The respondent have shown that the rents in a schedule supplied by the plaintiff/applicant was 20,000/= per month. This schedule has not been commissioned as “*a true copying of original*” by the commissioner of oaths and the applicant.

12. The defendant states that cheques have earlier been released by the Plaintiffs quarterly at the rate of 40,000/= per month paid quarterly namely

4.8.06 - Kshs. 120,000/=

31.12.06 - Kshs. 120,000/=

31.3.07 - kshs. 120,000/=

The rents have never been Ksh. 20,000/= per month.

13. This court is of the opinion that the plaintiffs/applicant should not be granted restraining orders due to non disclosure that the defendants purported to charge rents of Kshs. 40,000/=.

14. I am convinced that on the 5th November, 2008 the deputy registrar of this court wrote to the auctioneer not to levy distress when in effect no such orders are made on this file. A decree that is extracted by the court must name the Hon. Judge making the orders. I further note that the under taking for paying damages of Kshs. 50,000/= has not been given by the plaintiffs/applicant.

15. The prayers for injunctions is dismissed with costs to the defendant/respondent.

DATED this 10th day of March, 2009 at **KERICHO**

M.A. ANG’AWA

JUDGE

ORDER – That the letter appearing as the orders of the High Court of Kenya 5th November, 2008 be investigated by

- i) *Identifying the deputy registrar who signed the same.*
- ii) *By counter-checking in letter orders are indeed on the court record, if so.*
- iii) *By investigating why the Hon. Judges, name is not on the said purported document.*
- iv) *That a copy of this order be submitted to the Registrar together with the copy of the Ruling. Further Mention on 30th March, 2009.*

DATED this 18th day of March, 2009 at **KERICHO**

M.A.ANG’AWA

JUDGE

Advocates

W.R. Kiprono advocate from M/S W.R. Kiprono & Co. advocates instructed to hold brief for the applicant/plaintiff – present

I.O. Meroka advocate from M/S Meroka & Co. advocates from M/S Meroka & Co. advocates instructed to hold brief for M/S Masese and Nyamwange advocates for the Respondent/Defendant – present.