



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

Miscellaneous Application 81 of 2009

ANDREW WEBUYELE BIKETI..... PLAINTIFF

VERSUS

CHINESE CENTRE FOR THE PROMOTION OF

INVESTMENT & TRADE IN KENYA LIMITED.....1ST DEFENDANT

WARLEEN TRADERS (K) LIMITED.....2ND DEFENDANT

GEORGE N. KIMANI.....3RD DEFENDANT

R U L I N G

The application under consideration is a Notice of Motion dated 11th February, 2009 expressed to be brought under Order XLII rule 2 and 3, Order XLI rule 4(6) of the Civil Procedure Rules and sections 3A, 63(e) and 75 of Civil Procedure Act. The Applicant seeks prayers 4 to 7 of the motion namely:

- 4. That the Plaintiff be granted a temporary injunction restraining the 1st Defendant from alienating, leasing, taking possession or entering into any contract in respect of the premises known as Martin's Bar and Lounge situate on 1st Floor, China Centre, L.R. Number 209/15380 in Nairobi pending the Hearing and Determination of this application and appeal gains the Ruling of the Hon. Aggrey Muchellue in an application dated 16th December 2008 CMCC Number 7976 of 2008 issued on 9th February 2009.**
- 5. An order of the Court Injuncting the 2nd Defendant from selling plaintiff's goods distrained from the suit premises on 2nd December 2008 pending the Hearing and Determination of an Appeal from the Ruling of the Hon. Aggrey Muchelule of 9th February 2009.**
- 6. An order of the court stopping the 3rd Defendant from collecting irregular legal fees in the sum of Kshs.260,000/- pending the Hearing and Determination of an Appeal from the Ruling of the Hon. Aggrey Muchelule of 9th February 2009.**
- 7. An order of the Court that costs be in the cause.**

The grounds of the application are on the face of the application.

The application is opposed. The 1st and 3rd Defendants have each filed replying affidavits which I have considered. The 1st and 3rd Defendants, hereinafter the Respondents, filed a Notice of Preliminary Objection. That objection challenged the Plaintiff's Advocate, Ms. Koki Mbulu's ability to represent the Plaintiff. It was contended that the said Plaintiff's Advocate had prepared the Lease Agreement between the Plaintiff and the Applicant and therefore ought not to represent the Plaintiff in this suit. That objection was heard and dismissed basically on a technicality that the issue ought not to have been raised not as a Preliminary Objection but through a substantive application by way of a Notice of Motion objecting to the said representation.

The Plaintiff's application was then set down for hearing and has since been argued before this court. In the process of the arguments, it became apparently clear to me that the entire application has been brought before the wrong Division of the court. This application ought to have been filed before the High Court Civil Appeals where the intended appeal will be heard. The Applicant has annexed a Memorandum of Appeal and has in his submissions indicated that the appeal has already been filed in the High Court Civil Appeal section. It is my view that this application should be transferred to that court for hearing and disposal.

I note that this application came under certificate of urgency and was heard by my sister Hon. Khaminwa J. on 12th February, 2009. My learned sister granted temporary orders in terms of prayers 4 and 5 of the Notice of Motion pending *interpartes* hearing. Those orders are still in force.

I think the proper order to make in this matter is that this file be placed before the High Court Civil Appeals Division for directions. In the meantime the temporary orders granted by Khaminwa, J. on 12th February, 2009 are extended until further orders of that court.

Dated at Nairobi this 12th day of June, 2009.

LESIIT, J.

JUDGE

Read, delivered and signed in presence of:

Mr. Maina for Applicant

Mr. G. Kimani for 1st and 3rd Defendants/Respondents

LESIIT, J.

JUDGE