



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 311 of 2009

CAROLINE ANYANGO ONYANGO.....PLAINTIFF

VERSUS

JASON MAINGI.....DEFENDANT

R U L I N G

1. Before me is an application dated 10<sup>th</sup> June, 2009 brought by the Plaintiff/Applicant by way of a Chamber Summons, under the provisions of Order 39 rule 1 and 2 of the Civil Procedure Rules and Section 3A and 63(e) of the Civil Procedure Act.
2. The application is seeking for a temporary injunction against the Defendant/Respondent from proceeding with distress and a sale of immovable properties to be found at Hse No. 236, Dam Estate Nairobi. The Plaintiff, her husband, children and other family members reside in the said premises.
3. The defendant/respondent who is the landlord objects to the said application and filed a replying affidavit dated 1<sup>st</sup> July, 2009.
4. The applicant contends that, the Lease Agreement is between her husband one *Alfayo Onyango* and the Defendant/respondent. Although married to the tenant, the goods subject matter herein excessively belong to her. The Plaintiff/applicant objects to the Defendant/respondent restraining the household goods in default of rent amounting to **Kshs.390,000/=** although, she admits that same is due and owing.
5. The Defendant/respondent on his part contends that the plaintiff/applicant and the husband both reside in the premises and that the applicant has a number of times paid the rent. The Defendant/respondent contends further that the application is an attempt to deny him his dues.
6. The levying of distress is one of the remedies available to a landlord when rent is due and owing. The Plaintiff/applicant has not denied that the defendant/respondent is owed **Kshs.390,000/=** in terms of rent arrears. At the time of levying distress rent for 13 months amounting to **Kshs.390,000/=** was outstanding.
7. An injunction is an equitable remedy and he who comes to a court of Equity must come with clean hands. Looking at the receipts annexed to the affidavit in support of ownerships of the items, the court is not convinced by the authenticity of the said receipts. Secondly the Plaintiff/applicant admits that at the time of levying distress the Defendant was owed Kshs.390,000/= rent for 1 year 1 month. No proposal is forth coming from the either Plaintiff, or the so called tenant of how these arrears and rent accruing will be paid. A court of Equity ought not to be used by one party to the detriment of the other.
8. The Plaintiff herein has failed in my view to prove to this court that she has met the standards required for granting of an injunction as set out in the case of Giella vs Cassman Brown.
8. The Plaintiff has failed to demonstrate to this court that she has a prima facie case with a probability of success, that the injury likely to be suffered cannot be compensated by way of damages, thirdly that in the absence of the two, the balance of convenience tilts to her favour. It is obvious to this court that the

tenant of House No.236, Dam Estate wants to use the court to evade payment of rent. To mind this amounts to an abuse of the court process, as a result therefore, I am unable to grant the prayers sought for and dismiss the application with costs.

Dated and delivered at Nairobi this 28<sup>th</sup> day of July, 2009.

**ALI-ARONI**

**JUDGE**