



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CYCLE IMPORTERS LIMITED.....PLAINTIFF

VERSUS

KALSON PROPERTIES LIMITED.....1ST DEFENDANT

FRONTIER PROPERTIES LIMITED.....2ND DEFENDANT

BEN MBUGUA GATHURI t/a

AUCKLAND AGENCIES.....3RD DEFENDANT

RULING

1. The application before me is the Plaintiff's Notice of Motion dated 2/03/2009 expressed to be brought under Order XXXIX Rule 2, Order L Rule 1 of the Civil Procedure Rules, Sections 3A and 63(e) of the Civil Procedure Act and all other enabling provisions of the law. The Applicant seeks a total of sixteen (16) orders, but for purposes of this ruling, the Applicant seeks the following orders numbered e, f, h, I,, j, k, l, m, n, o, and p; that is to say:-

(i) THAT the court be pleased to grant an order of mandatory injunction compelling the 1st, 2nd and or 3rd Defendants to return to the Plaintiff all the goods removed by them from the Plaintiffs' rented premises namely LR 209/2534 Nairobi, to a location within Nairobi specified by the Plaintiff and at the cost of the Defendants, pending the hearing of the suit herein.

(ii) THAT the court be pleased to grant an order of mandatory injunction compelling the Third Defendant to return to the Plaintiff all the goods removed by it from the Plaintiff's rented premises namely LR 209/2534 Nairobi to a location within Nairobi specified by the Plaintiff and at the cost of the Defendants, pending the hearing of the suit herein.

(iii) THAT the court be pleased to grant an order of mandatory injunction compelling the Third Defendant to return to the Plaintiff all the goods removed by it from the Plaintiff's rented premises namely LR 209/2534 Nairobi to a location within Nairobi specified by the Plaintiff, and at the cost of the Defendants, pending interpartes hearing of this application (this prayer is now spent)

(iv) **THAT the court be pleased to issue a temporary injunction to restrain the 1st, 2nd and or 3rd Defendants herein whether by themselves, their representatives, employees, agents, servants, or any other persons acting on their behalf or claiming through them from proceeding to proclaim or auction or sell any property of the Plaintiff or other property that was in the Plaintiff's custody on the suit premises LR 209/2534 Nairobi or that had forcefully been removed from the property, pending the hearing and determination of this suit.**

(v) **THAT the court be pleased to grant an order of injunction restraining the 1st, 2nd and or 3rd Defendants herein whether by themselves, their representatives, employees, agents, servants or any other persons acting on their behalf or claiming through them from making structural changes to the suit premises LR 209/2534 Nairobi that could in any way interfere with the Plaintiff's tenancy thereon pending the hearing and determination of the suit.**

(vi) **THAT the court be pleased to grant an order that the Officer Commanding Station (O.C.S.) Central Police Station or an officer under him not below the rank of Assistant Inspector do supervise the carrying out of the said orders specifically the safe return of goods to the Plaintiff as specified hereinabove and provide security for the purpose of maintaining law and order on and around the vicinity of the property LR 209/2534 Nairobi.**

(vii) **THAT the court be pleased to grant an order declaring illegal the attachment of the Plaintiffs trading stock illegal (sic) and for a further order lifting the attachment.**

(viii) **THAT the orders of Ireri made on 24th day of February 2009 do be set aside.**

(ix) **THAT this Honourable Court be pleased to exercise its disciplinary powers as against the 1st, 2nd and or 3rd Defendants herein.**

(x) **THAT the costs of this application be provided for.**

2. The application is premised on the grounds on the face thereof, being 5 in number as follows:-

1. **THAT the Plaintiff owes no rent in respect of the suit property herein, namely L.R. No. 209/2534 Nairobi.**

2. **THAT there had been no proclamation of any goods as required by law prior to forceful**

removal of the Plaintiff's goods from the suit property herein.

3. ***THAT the Business Premises Rent Tribunal had earlier ordered that rent be deposited with it pending resolution of who was entitled to the rent accruing in respect of the suit property, and payments for rent had been deposited at the Business Premises Rent Tribunal in line with the order.***

4. ***THAT any break in orders obtained in this matter could only have been obtained on strength of material non-disclosure, the Plaintiff's shop having been open for business every day.***

5. ***THAT the Defendants Respondents' actions are wholly unlawful and in bad faith, and contrary to the rule of law, and this court's intervention is essential.***

The application is also supported by the sworn affidavit of **NADIA KARA**, dated 2/03/2009, and a further affidavit by the same deponent sworn on 23/03/2009.

3. The application is opposed. There are 2 Replying Affidavits one sworn by **YUNIS OMAR** filed on 6/03/2009 and the other by **ATUL SHAH** filed on 17/03/2009. There is also the Further Affidavit by **ATUL SHAH** filed on 31/03/2009. The application is also opposed by the Replying Affidavit of **BEN MBUGUA GATHURI** t/a Aucland Agencies, the 3rd Defendant herein.

4. Before the interpartes hearing, the parties were all ordered to file their written submissions in order to save time on oral submissions. The Plaintiff, through M/s Sichangi & Co. Advocates filed their written submissions on 6/05/2009. Instead of filing written submissions as ordered on 26/03/2009, the 1st Defendant filed a Chamber Summons application dated 29/04/2009 on 8/05/2009, in which it sought an order striking out the Plaintiff's entire suit. That application, filed by M/s Waruhiu, Kowade & Ng'ang'a Advocates is still pending. Neither the 2nd nor 3rd Defendants filed any written submissions as ordered by this court on 26/03/2009.

5. At the hearing of the application, Mr. O. Ojiambo, counsel for the Plaintiff/Applicant relied heavily on the Plaintiff's written submissions which were duly filed in court on 6/05/2009. The salient points of the Plaintiff's submissions are as follows:-

1. ***The Plaintiff has operated in the suit premises since 1948 under an agreement entered into with the 1st Defendant Kalson Properties Ltd, as landlord. This fact is not disputed by Mr. Atul Shah of the 1st Defendant.***

2. ***The 1st Defendant sought to terminate the tenancy, as a result of which the dispute between the Plaintiff and the 1st Defendant ended up at the Business Premises Rent Tribunal. Again the 1st Defendant admits this fact at paragraph 4 of its Statement of Defence where the 1st Defendant avers as follows:-***

“4. The 1st Defendant admits the contents of paragraph 6 of the plaint and further avers that there were disputes between the Plaintiff and the 1st Defendant and that the same have been referred to the Business Premises and Rent Tribunal for determination thereof.”

For completeness and the full import of the plaint, Paragraph 6 of the plaint reads as follows:

“6. There have been previous disputes involving the 1st Defendants attempts to alter the terms of the Plaintiff’s tenancy of the suit premises and even to terminate it, from which disputes it has been determined that the Plaintiff’s tenancy is a controlled tenancy regulated by the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, (Chapter 301 of the Laws of Kenya).”

3. The Plaintiff has faithfully paid rent of Kshs.49,184/= to the 1st Defendant, and in particular has fully paid rent covering the period March to end of October 2008; and no arrears of rent are claimed by the 1st Defendant.

4. On 12/11/2008, the Plaintiff was informed by letter written by the 1st Defendant’s advocates that the suit property had been sold and that the tenancy was terminated, and that such termination had been done without notice to the Plaintiff.

6. The letter referred to by the Plaintiff is addressed to M/s Anil Joshi & Company Advocates by Waruhiu K’owade & Nganga Advocates and reads in part:-

“Dear Sirs,

RE: LR NO. 209/2534 MONROVIA STREET

We write to inform you that our client has sold the above property to M/S FRONTIER PROPERTIES LIMITED. We shall be forwarding to you their full address shortly.

In the meantime kindly note that your client’s tenancy with ours has automatically terminated by virtue of the change of ownership of the demised premises.

Yours faithfully,

WARUHIU K’OWADE & NGANGA

Signed

A.N. THANGEI”

5. *The 1st Defendant never availed to the Plaintiff the address of the 2nd Defendants as promised in their letter of 12/11/2008 on the ground that the said 1st Defendant had no obligation to notify the Plaintiff of the new landlord/owner of the suit property whatsoever howsoever since the tenancy between the 1st Defendant and the Plaintiff had terminated upon transfer of the suit property to the 2nd Defendant.*

6. *When the 1st Defendant failed to respond, the Plaintiff proceeded to the Business Premises Rent Tribunal where it (Plaintiff) obtained orders that in the absence of a forwarding address of the new landlord, the Plaintiff was to deposit rent at the Tribunal for collection by the landlord at the landlord's convenience.*

7. *After the Tribunal's orders, the Plaintiff has dutifully deposited the rent at the Tribunal and that inspite of these payments, the Plaintiff's premises were broken into on the morning of 28/02/2009 by the Defendants' agents and or servants and all the Plaintiff's goods were carted away to a destination unknown to the Plaintiff, and that all the Defendants' actions were done in total disregard of the Tribunal's orders. The said break in resulted in total wreckage of the suit premises and a loss of about Kshs. 100 million to the Plaintiff.*

7. The Plaintiff says that the facts of the case as given by the 1st and 2nd Defendants differ substantially from the Plaintiff's and that what is alleged by the Defendants are mere fabrications and untruths. The Plaintiff highlights the following facts to be in dispute:-

1. *While the Plaintiff avers that there have never been any arrears of rent by the Plaintiff, the 1st and 2nd Defendants aver that there were rent arrears of some 2.5 million from the Plaintiff.*

2. *The 2nd Defendant alleges that there was no agreement with the Plaintiff to increase monthly rent from the previous monthly figure of Kshs.49,184/= to Kshs.250,000/= with effect from 1/10/2008 payable quarterly in advance and a deposit of 5 months' rent.*

The Plaintiff further says that the Defendants' allegations about rent increase are mere fabrications for reasons that:-

- (a) It is highly improbable that the Plaintiff would agree to an increase of Kshs.250,000/= in monthly rent and a deposit of 5 months of the said increase;**
- (b) There is no documentary proof of the alleged agreement to increase rent as alleged by the Defendants;**
- (c) The Defendants have failed to show how the rent arrears of Kshs.2.5 million have been arrived at**
- (d) The 2nd Defendant's claim that the Plaintiff was to pay new rent from 1/10/2008 is unsupported by documentary evidence and is not in line with the advice received by the Plaintiff vide the 2nd Defendant's letter dated 12/11/2008;**
- (e) The rent for October 2008 had long been paid and accepted by the 1st Defendant and duly receipted**
- (f) As at 1/10/2008, the 2nd Defendant was not the registered proprietor of the suit property.**

8. For the above reasons, the Plaintiff contends that the 2nd Defendant's allegations are too inconsistent to be of any evidential value and urges the court to find and to hold that the 2nd Defendant's allegations are a mere desperate attempt to seek to illegally and constructively evict the Plaintiff from the suit premises in blatant disregard of the law. The Defendants allegations are that:-

- (a) The Plaintiff is in rent arrears of Kshs.2,500,000.00 which amount continues to grow at the rate of Kshs.250,000/= per month.**
- (b) The Plaintiff knew at all times material to this suit that the 2nd Defendant was the registered proprietor of the suit premises and therefore that the Plaintiff could not have paid rent to the 1st Defendant;**
- (c) The Plaintiff surreptitiously and mischievously filed a Reference at the Business Premises Rent Tribunal against the 1st Defendant and procured ex parte orders through deception and material non-disclosure of facts.**

(d) The 2nd Defendant has not prevented the Plaintiff from accessing the property and conducting business but on the contrary, the Plaintiff abandoned the suit premises unguarded and exposed it to serious risks and damages.

(e) The Plaintiff has not suffered nor does it continue to suffer any damage, and if there is any such damage, it is the Plaintiff to blame for it.

(f) The Plaintiff is the author of its own predicament as to who is the rightful person to receive the rent and that the consequences of failing to pay rent were reasonably foreseeable by the Plaintiff.

9. The Plaintiff also argues that as a protected tenant, its relationship with the 1st and 2nd Defendants is controlled by the provisions of the Landlord and Tenant (Shops Hotels and Catering Establishment) Act, Cap 301 Laws of Kenya on the further grounds that:-

1. the dispute between the Plaintiff and the 1st Defendant has been twice adjudicated upon by the Business Premises Rent Tribunal (BPRT), a fact that is admitted by the 1st Defendant in its defence.

2. there is no evidence that the Plaintiff's tenancy was terminated in accordance with the provisions of Cap 301 or otherwise

3. the mere fact that there may have been a transfer of the suit premises from the 1st to the 2nd Defendant does not automatically terminate the protected tenancy between the Plaintiff and the 1st Defendant

10. The Plaintiff relies on section 5(1) of Cap 301 to buttress its position that even if the suit property had been transferred to the 2nd Defendant by the 1st Defendant, the Plaintiff's protected tenancy would not automatically terminate. Section 5(1) provides as follows:-

“5(1) Where a landlord is himself a tenant, the termination of the landlords tenancy shall not of itself terminate a controlled sub-tenancy, but for the purposes of this Act the person entitled to the interest in reversion expectant on the termination of the landlord's tenancy shall be deemed to be the landlord of the controlled sub-tenancy upon the terms and conditions thereof, and subject to the provisions of this Act.”

On the issue of controlled tenancy, the Applicant cited the following authorities:-

(i) **Mega Fries Ltd. –vs- Mukesh Savla & 3 Others HCCC No. 324 of 2005** (a case of persuasive authority) in which Osiemo J held, and I think correctly so, that a controlled tenancy cannot be terminated or altered except in accordance with the law, and in particular in accordance with Section 4(1) of Cap 301 which provides as follows:-

“4(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act”.

The court found and held that the mere fact that the previous landlord had transferred the suit premises to a view landlord did not mean that the controlled tenancy had been terminated. The injunctive orders sought by the Plaintiff/Applicant in that case were granted.

(ii) **Chabadhia Enterprises Ltd. & Another –vs- Mary Nasimiyu (HCCC No. 130 of 1999)**

The facts were that the suit property was sold to a third party with sitting tenants. The court (Sergon J) found and held that ***“the law does not permit a person who acquires proprietary interest in the manner the Defendant did to proceed to levy distress or to evict the tenants. Such a person must dispossess the tenants of the occupation of such premises in the manner prescribed for by the law. That is to say the landlord can only remove them as sitting tenants.”***

(ii). **Reuben Mugambi –vs- Kenyatta Hospital (HCCC No. 973 of 2004)**. Similarly in this case, the suit property had been surrendered by the landlord to another party and the matter was pending before the BPRT. The Plaintiff/Applicant applied for a mandatory injunction requiring the Defendant/Respondent to reopen the suit premises for the Plaintiff and to keep the premises open. The court (Ojwang J) granted the orders sought – both mandatory and restraining orders of injunction.

(iv) **Haircare Beauticians –vs- Standard Properties Limited**

(Civil Application No. NAI 179 of 1998)

In this case, the landlord accepted payment of rent from the tenant under a consent order, despite the fact that the payment was made out of time. After accepting the payment, the landlord sought to evict the Applicant. The court found and held that in attempting to evict the tenant, the landlord was trying to steal a march on the tenant and that as such, the court could ***“not sit back and encourage conduct, unlawful or wrongful as a passport to favour”***. The court granted ***“a mandatory injunction against the Respondent restoring possession of the suit premises to the Applicant forthwith.”***

11. On the basis of the above facts and the law, counsel for the Plaintiff/Applicant urged the court to find and to hold that the Plaintiff has made out a prima facie case with a probability of success; that the 1st and 2nd Defendants have acted in violation of the law by purporting to levy distress; that the court should

grant the orders sought.

12. The following are the arguments put forth by Mr. Thangei, advocate for the 1st Defendant, that is to say:-

(1) *that the application is fundamentally defective in that it is brought by way of Notice of Motion when it should have been brought by way of Chamber Summons. That Rule 9 of Order XXXIX provides in mandatory terms that applications under the Order are to be made by way of Chamber Summons. Mr. Thangei argued that the error committed by the Plaintiffs, herein is fundamental and is not curable. Rule 9 of Order XXXIX provides:-*

“Applications under rules 1 and 2 shall be by summons in chambers”. (Emphasis is mine)

(2) *that in light of the transfer dated 6/10/2008 which is exhibited with the Replying Affidavit of Yunis Haji as annexure “YHO 1”), then section 38 of the RTA comes into play to shield the 1st Defendant against the Plaintiff’s claims. Mr. Thangei also submitted that the 1st Defendant’s obligation to the Plaintiff was fulfilled by the 1st Defendant’s letter dated 12/10/2008 through which the 1st Defendant provided the name and postal address of the new landlord, though admittedly, the 1st Defendant did not give the physical address of the new landlord.*

(3) *That the proceedings before the BPRT were filed after the 1st Defendant had already informed the Plaintiff by the letter of 12/10/2008 that the suit property had been sold; and the 1st Defendant’s proprietary rights in the suit property relinquished*

(4) *That according to the Replying Affidavit dated 15/04/2009 made on behalf of the 3rd Defendant the instructing client to the 3rd Defendant was the 2nd Defendant, Kalson Properties Limited.*

For the above reasons, Mr. Thangei urged the court to dismiss the Plaintiffs’ application against his client, the 1st Defendant.

13. Mr. Wachira, advocate for the 2nd and 3rd Defendants made similar points of law as those made on behalf of the 1st Defendant. He also made the following points:-

(a) *On prayer K – that having abandoned the suit premises, the Plaintiff is only in constructive occupation of the suit premises and that in any event it is the Plaintiff who damaged the suit premises for which, the 2nd and 3rd Defendants have counter-claimed to the tune of Kshs.6.8m. That to grant this prayer would interfere with proprietary rights of the owner.*

(b) *On Prayer (e)*

Mr. Wachira urged the court to disallow this prayer on two fronts:- one, that it is brought against the wrong persons and two, that it is a repetition of prayer (f) of the application.

(c) On Prayer (f)

Mr. Wachira submitted that the distress for rent was lawful because the Plaintiff was in rent arrears. He also submitted that the 3rd Defendant got a court order to break into the suit premises. He also submitted that the only question to be considered by the court is why the Plaintiff filed a Reference before the BPRT. He said that the Plaintiff should not blame anyone for its predicament because it was made aware that the suit property had changed hands as early as 12/10/2008 and before the filing of the Reference on 2/12/2008.

(d) On Prayer l

Under this prayer the Plaintiff wants the court to order the police, Central Police Station to supervise the carrying out of the injunctive orders that may be issued against the Defendants herein. Mr. Wachira argued that the courts are not usually keen on making such orders in civil matters. The upshot of what Mr. Wachira was saying is that this court should decline to grant such an order.

(e) On Prayer m

The Plaintiff seeks a declaratory order to the effect that the attachment of the Plaintiff's trading stock is illegal and to further grant an order lifting the attachment. Mr. Wachira submitted that such an order cannot and should not be made at this interlocutory stage.

(f) On Prayer O

Under this prayer, the Plaintiff has asked the court to exercise its disciplinary powers as against the 3 Defendants to which Mr. Wachira says the prayer is so ambiguous that it should not be granted.

14. Mr. Wachira submitted that all the Authorities cited by plaintiff's counsel were irrelevant in that they all deal with the issue of eviction. He contended that the 2nd and 3rd defendants did not evict the plaintiff. He also argued that the authorities do not deal with the issue of lawful distress where a tenant refuses to pay rent to a new landlord. In Mr. Wachira's view, the Plaintiff was playing dirty games by choosing to continue paying rent to the 1st Defendant after it was informed that the 1st Defendant had already sold the property to the 2nd Defendant. Mr. Wachira also submitted that if the Court were to grant the orders sought herein, it would be doing so in vain since the suit property has already been destroyed by the Plaintiff. He argued further that this application is a mere academic exercise with no jurisprudential value.

15. In his reply, Mr. Ojiambo submitted that the central issue in this case is whether there was any agreement to raise rent, and that all the available evidence shows that there was no such agreement to raise rent from Kshs.49,184/= to Kshs.250,000. Mr. Ojiambo also argued that the Plaintiff's case is one of protected tenancy, an issue upon which all the 3 Defendants have said nothing.

16. Regarding section 38 of the Registration of Titles Act, Mr. Ojiambo submitted that the 2nd Defendant cannot in fact purport to have taken over the suit property without subjecting himself to the conditions and rights under the Registration of Titles Act even if in the worst scenario which excludes the application of Cap.301. Section 38 of the Registration of Titles Act, Cap.281 of the Laws of Kenya provides as follows:-

“38. Upon the registration of any transfer of any charge or lease, the interest of the transferor as set out in instrument, with all rights, powers and privileges belonging or appertaining thereto, powers and privileges belonging or appertaining thereupon become subject to and liable for the same requirements and liabilities to which the transferor would have been subject and liable if the transfer had not been made’.

and that in any event, the section favours the Plaintiff's case.

17. Finally, Mr. Ojiambo submitted that the Plaintiff has made out a case for the grant of the orders sought and further that this application is not a mere academic exercise. He argued that the Defendants have failed to address the central issue in this case, namely the Plaintiff's contention that it is a protected tenant. Mr. Ojiambo urged the Court to consider the entire pleadings in the exercise of its discretion and to find that the Plaintiff is entitled to the orders sought.

18. The general principles governing the law of injunctions were explained in the case of **Giella –vs- Cassman Brown & Co. Ltd [1973] E.A. 358**. Mandatory injunctions are governed by the same principles. In the instant case, the Plaintiff seeks mandatory injunctions to restore the Plaintiff's goods which, goods the Plaintiff alleges were carted away by or on the instructions of the Defendants herein. Such orders can be granted at the discretion of the Court on sound principles. According to Kuloba (Principles of injunctions, OUP 1987, 80) the Court should,

“In considering the prayer for the injunction, it is a highly material fact that the Defendant continued to do wrong in the face of a clear and early protest by the Plaintiff; for his conduct is inexcusable if in the teeth of a warning given, he rushes up his offending structure or other wrong before he is stopped, so as to steal a march on the Court, and he should not complain when he is treated to a mandatory injunction, because he proceeds at his own peril. If the Defendant acts wantonly or unreasonably, a mandatory injunction will be granted even if it will involve great expense and cost out of all proportion to the advantage which will be conferred upon the Plaintiff, or even if valuable improvements to the property will have to be demolished”

19. It is also a principle of the law of injunctions that “ a mandatory injunction will not be granted where damage is not substantial and irreparable, or where damages or some other lawful remedy would provide an adequate relief, so that where there is no assurance that an award of damages would suffice and the prospect of recovering adequate damages is remote, then a mandatory injunction ought to issue.

20. The issue around which this case revolves is whether the Plaintiff has satisfied the conditions for the granting of injunctions as set in the case of **Giella –vs- Cassman Brown & Co. Ltd**. In other words, has the Plaintiff shown that it has a case with a probability of success; that there is a likelihood of irreparable harm which would not be adequately compensated by way of damages and whether the balance of convenience would tilt in its favour in any event. It is also to be noted here that a mandatory injunction can only be granted in the clearest and exceptional cases – see **Simon Ngatunyi Chali –vs- Solomon Kiragu Thande [2005] e KLR**.

21. It is not in dispute that the Plaintiff has been a tenant in the suit premises for over 50 years; that it has faithfully paid rent as and when it is due; that the suit premises changed hands when the Plaintiff was still in occupation; that the 1st and 2nd Defendant played a rat and mouse game after the change of ownership thus making it difficult for the Plaintiff to pay rent due; that the 2nd Defendant, through the 3rd Defendant broke into the suit premises, caused wanton destruction and took away the Plaintiffs tools of trade. The purported distress for rent was done at a time when the Plaintiff was not in any arrears of rent. It would thus appear to me that the 2nd Defendant was bent on getting rid of the Plaintiff from the suit premises at whatever cost.

22. In the above circumstances, I am persuaded that this is one of those clearest and exceptional cases in which mandatory injunctions ought to be issued. The 1st and 2nd Defendants used the revised rent as an excuse for saying that the Plaintiff was in arrears of rent and to cause the Plaintiff's removal from the suit premises. The Defendants, no doubt, stole a march on the Plaintiff in an extremely unorthodox manner. The Defendants have not denied that the Plaintiff's goods were carted away and still remain where they were taken by the 3rd Defendant. (see **Bachelor's Bakery Ltd. –vs- Westlands Securities [1982] KLR 366**).

23. In the circumstances of this case, I have no option but to allow the Plaintiffs application for

mandatory injunctions in the following terms:-

- (a) *that the 1st, 2nd and 3rd Defendants be and are hereby compelled to return to the Plaintiff all the goods removed by them from the Plaintiff's rented premises namely LR 209/2534 Nairobi to a location within Nairobi specified by the Plaintiff and at the cost of the Defendants pending the hearing and determination of the suit herein;*
- (b) *that the 3rd Defendant be and is hereby compelled to return to the Plaintiff all the goods removed by it from the Plaintiff's rented premises namely LR 209/2534 Nairobi to a location within Nairobi specified by the Plaintiff and at the cost of the said 3rd Defendant pending the hearing and determination of this suit herein*
- (c) *that the 1st, 2nd and 3rd Defendants be and are hereby restrained either by themselves their representatives employees, agents, servants or any other person acting on their behalf or claiming through them from proceeding to proclaim, or auction or to sell any property of the Plaintiff or other property that was on the suit premises LR 209/2534 Nairobi or that had forcefully been removed from the suit premises pending the hearing and determination of this suit*
- (d) *that the OCS, Central Police Station Nairobi or an officer under him not below the rank of Assistant Inspector do supervise the carrying out of the above injunctive orders, specified herein above and provide security for the purpose of maintaining law and during the return of the goods*
- (e) *that it is hereby declared that the attachment of the Plaintiff's trading stock was illegal and the said attachment be and is hereby lifted*
- (f) *that the orders of Hon. Ireri, Chairman BPRT made on 24/02/2009 be and are hereby set aside.*

The costs of this application shall be borne by the Defendants/Respondents jointly and severally.

It is so ordered.

Dated and delivered at Nairobi this 27th day of August, 2009.

R.N. SITATI

JUDGE

Delivered in the presence of:-

Mr. Ojiambo (present) for the Plaintiff/Applicant

Mr. Simani holding brief for Thangei and Wachira for the 1st, 2nd & 3rd Defendants/Respondents

Weche - court clerk