



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

**Civil Case 202 of 2009**

**ARSHAD KHAN.....PLAINTIFF**

**VERSUS**

**DHIREN HAIR DESIGNER LIMITED AND ANOTHER.....DEFENDANT**

**RULING**

The plaintiff/applicant invoked the seat of justice herein vide a plaint dated 15<sup>th</sup> day of April 2009 and filed on the same date. The salient features of the same are as follows.

- Vide paragraph 5 of the plaint, that, on 30<sup>th</sup> day of March 2009 the first defendant being a lessor there to, for a term of 5 years and 3 months sub-let to the plaintiff herein a portion of LR NO. 1870/148/2 situated in spring valley along General Mathage Drive in Nairobi for a period of 2 years with effect from 1<sup>st</sup> April 2009 until 31<sup>st</sup> March 2011 on a monthly rent of Kshs. 110,000/= paid quarterly in advance.
- Vide paragraph 6 thereof, that he duly paid the monthly rent and a deposit equivalent to 3 months rent in advance of Kshs. 330,000/= to the 1<sup>st</sup> defendant which was duly acknowledged by the 1<sup>st</sup> defendant, where upon the plaintiff took possession of the premises and began conducting his business.
- Paragraph 7 that it was a term of the lease between the plaintiff and the 1<sup>st</sup> defendant that during the pendency of the lease, he would be entitled to quiet possession and enjoyment of the premises demised onto him.
- Vide paragraph 8 that on or about 8<sup>th</sup> April 2008, the plaintiff arrived at his premises to conduct his business where upon he found that the padlock used by himself had been illegally and unlawfully removed and in its place a substitute padlock had been used to lock the main door thus denying him quiet possession of the said premises.
- Vide paragraph 9 of that the plaintiff later established that the 2<sup>nd</sup> defendant through itself, servant and or agent without any authority or colour of right had unlawfully gained entry into the premises thus denying him use of the same and which quiet possession he does not enjoy to date.
- Vide paragraph 10 that the plaintiff later came to court, that previously, the 2<sup>nd</sup> defendant had been a tenant of the 1<sup>st</sup> defendant and that he had been evicted.

In consequence thereof the plaintiff sought the following reliefs:-

(a) A declaration that the 1<sup>st</sup> defendant's action of failing to ensure quiet possession of the suit premises amount to a breach of contract.

(b) A declaration that the action of the 2<sup>nd</sup> defendant is unlawful, null and void abinitio.

(c) A permanent injunction preventing the 1<sup>st</sup> and 2<sup>nd</sup> Defendants either by themselves, their servants, agents or any one action on their behalf from interfering with the plaintiff quiet possession of the suit premises until further orders of this court.

(d) Mean profits.

(e) Costs of the suit and interest thereon.

On the said plaint was anchored, an interim application dated and filed simultaneously with the plaint. It is brought under order XXXIX 1, 2, 3 and L rule 16 CPR sections 3A of the CPA and all other enabling provisions of the law. A total of 8 reliefs are sought namely:-

1. Spent

2. Spent

(3), (4) That the defendants either by themselves, their servants, employees and or agents to be restrained from accessing, letting, sub letting, alienating or in any other manner dealing with the plaintiffs shop located on the property known as L.R. NO. 1870/148/2 situated in Spring Valley along general Mathange Drive Nairobi, pending the hearing and determination of this application as per prayer 3 and pending the hearing and determination of the suit as per prayer 4

5. That the plaintiff be immediately reinstated to his shop located on the property known as LR. NO 1870/148/2 situated in Spring Valley along general Mathange Drive Nairobi.

6. That the officer commanding the police Division-spring valley or in his absence, the officer commanding the police station, spring valley police station be ordered to ensure compliance of this order.

7. That the costs of this application be provided for.

8. That this Honourable court be pleased to grant such further or other relief as it may deem fit and just to grant.

The grounds are set out in the body of the application, grounds in the supporting affidavit and supplementary affidavit and oral representations made in court. A revisit to the same reveals that they are a reiteration of the content of the plaint. The major points stressed are as follows:-

-The plaintiff/applicant entered into a lease arrangement with the 1<sup>st</sup> defendant to lease a shop on the premises mentioned for a period of 2 years. The lease is annexed as annexure AK3.

-In pursuance of the execution of the said lease the plaintiff/applicant paid deposit for 3 months and current rents as demonstrated by annexure AK1 and 2.

-The lease was entered into on the 30<sup>th</sup> day of March 2009 and he took possession of the premises on 1/4/2009.

-He commenced and informed both old and new clients as well as prospective ones of the new location of his business.

-The execution of the lease granted quiet enjoyment of the said suit premises.

-The applicant's grievances and reason for moving to court, was because on 8<sup>th</sup> April 2009 upon arrival from a business he found a strange padlock on his business premises and then he was informed that the 2<sup>nd</sup> defendant was the Author.

-Him plaintiff is a stranger to the 2<sup>nd</sup> defendant and only came to learn later on that the second defendant had been a tenant of the 1<sup>st</sup> defendant in the premises before him.

-He seeks the court's, intervention in the manner sought because he has suffered losses, he continues to suffer losses of income, reputation, clientele factors injurious to his long standing reputation as a trustworthy, honest and dependable business, which reputation had taken years to built.

-The court, should step in to help in protecting him from the action of the 1<sup>st</sup> defendant and the wrongful acts of the 2<sup>nd</sup> defendant.

-The court, is invited to note that when the 2<sup>nd</sup> defendant committed the unlawful acts against him, he was aware that the plaintiff/applicant had possession of the said suit premises.

-Contend that damages to be suffered by them will be beyond monetary compensation.

-They also contend that the 2<sup>nd</sup> defendant canceled material particulars before he was reinstated into the said premises to the detriment of the applicant, and by reason of this, the court should rule that the 2<sup>nd</sup> defendant is not entitled to the orders he enjoys.

-Contend that they have met the requirements for the granting of an injunctive relief.

-They have qualified for the grant of an injunction irrespective of there being a possibility that they can be compensated for in monetary terms.

-The second defendant conducted himself contrary to law and as such the court, cannot exercise any discretion in his favour.

In his supplementary affidavits, he reiterates that he was not aware of the dispute between the defendants.

-Maintain, he had taken possession and put his merchandise into the shop.

-The 2<sup>nd</sup> defendant knows that the premises had been leased out.

-The 2<sup>nd</sup> defendant should have inquired into the new developments concerning the shop before rushing to court, to obtain orders complained of.

-Denies suggestion of collusion with the 1<sup>st</sup> defendant and abusing the court, process.

-That the lease was executed on 30<sup>th</sup> March 2009 and the one referred to as having been executed on the 20<sup>th</sup> day of March 2009 had an error of a date reading 20<sup>th</sup> instead of 30<sup>th</sup>.

-He maintains he is an innocent tenant as at the time he became a tenant, the 2<sup>nd</sup> defendant was not a tenant.

-He has been dragged into the dispute between the defendants just to deny him the enjoyment of the suit premises.

-Maintains he stands to suffer more than the 2<sup>nd</sup> defendant if the injunction relief is not granted in his favour.

The first defendant put in a replying affidavit, deponed by one Dhiren Kumar in 18<sup>th</sup> day of May 2009 and filed on the 19<sup>th</sup> day of May 2009. The points put forward by him are as follows:-

- Indeed the said premises had been leased out to the 2<sup>nd</sup> defendant.
- Notice of termination of tenancy was issued on 1<sup>st</sup> August 2008 in pursuance to the relevant provisions of the law.
- In response to the said termination notice, the 2<sup>nd</sup> defendant filed a reference in BPRT 571/2008, whose judgement was delivered on the 27<sup>th</sup> day of March 2009, upholding the notice and the 2<sup>nd</sup> defendant was ordered to vacate the premises.
- That it is on 30<sup>th</sup> day of March 2009 after the 2<sup>nd</sup> defendant had vacated the premises, that him 1<sup>st</sup> defendant entered into another lease with the plaintiff/applicant for a new lease and the applicant took possession of the suit premises. The 1<sup>st</sup> defendant is aware that the 2<sup>nd</sup> defendant had presented an application in the BPRT 571/2008 on 30<sup>th</sup> March 2009 to which they filed a replying affidavit and a preliminary objection to the plea for reinstatement.
- The said preliminary objection was heard and a ruling reserved. That on this date of 2/4/2009, the tribunal was informed that a new tenant had been installed and on the basis of that, the tribunal made an order for status quo.
- That it was only after the 2<sup>nd</sup> defendant failed to serve the orders from the tribunal that he moved to court, and obtained the orders complained of without informing the court, of the proceedings of the tribunal.
- The court, orders were effected on the 8<sup>th</sup> day of April 2009.
- By reason of what has been stated above, it is their stand that the interference of the applicants quiet enjoyment of the premises has been caused by the 2<sup>nd</sup> defendant and not them, and as such, they are not in breach of any contractual obligation to the plaintiff, and for this reason, the applicants' application against the 1<sup>st</sup> defendant should be dismissed.

To fortify their stand, the 1<sup>st</sup> defendant has exhibited second defendants' application to the tribunal seeking reinstatement annexed as DK1. The supporting affidavit filed depones in paragraph 2 and 3 thereof that the 2<sup>nd</sup> defendant had been forcefully evicted on the same 27/3/2009 at 4.55 p.m. when infact the tribunal had ordered that he vacates the premises within 30 days. There is also annexed the extracted tribunal orders indicating clearly that the tenant was to vacate with one month from the date thereof, there is also annexed a lease document dated 20<sup>th</sup> day of March 2009.

In addition to the deponement, and annexures, counsel for the 1<sup>st</sup> defendant in her oral highlights to court, adopted her submissions to court in HCCC A case No. 162/2009 as follows:-

- On 2/4/2009 the tribunal which had been informed of the change of occupation of the premises ordered that there be a status quo.
- Despite this order, the 2<sup>nd</sup> defendant moved to this court, and obtained orders upsetting that status quo.
- The 2<sup>nd</sup> defendant knowing that there was a tenant in the premises, proceeded to obtain eviction orders which were effected against the plaintiff resulting in the current proceedings.

- Maintains that they are not in breach of the contract.

Turning to the 2<sup>nd</sup> defendant, there is an affidavit deposed by one Elesh Kumar Gheewala, deposed on the 6<sup>th</sup> day of May 2009 and filed the same date. The summary of the content is as follows:-

- There exists HCCCA 162/2009 arising from the decision in BPRT 571/2009 concerning the suit premises.
- The 2<sup>nd</sup> defendant had been unlawfully evicted from the suit premises and he proceeded to obtain orders for reinstatement on 2/4/2009 and was duly reinstated and as such he is not unlawfully in possession of the said premises.
- Concedes that, when they regained entry to the premises through the help of the police, they found a few goods placed in the premises but no business had taken place therein.
- Any additional goods were sneaked in with the collusion of the plaintiff/applicant and the 1<sup>st</sup> defendant.
- Proof of collusion between the two is manifested by the fact that the leases exhibited by each differs from the other in terms of the execution date with that of 1<sup>st</sup> defendant reading 20<sup>th</sup> March 2009, where as that of the plaintiff/applicant reads 30<sup>th</sup> March 2009.
- By reasons of the afore said discrepancy, the 2<sup>nd</sup> defendant contends that by the time the lease was made on the 20<sup>th</sup> day of March 2009, the 2<sup>nd</sup> defendant was still a tenant and the tribunal proceedings were still pending.
- This goes to prove that the 1<sup>st</sup> defendant did not disclose to the plaintiff that there was a dispute over the premises which the plaintiff ought to have known and it is their stand that the execution of the lease, eviction and putting the plaintiff in possession were all calculated to defeat the tribunals orders which had specifically stated that the tenant was to vacate within one month.
- The leases were only meant to hookwink the court, to deny the 2<sup>nd</sup> defendant of the suit property.
- By reason of what has been stated above, goes to demonstrate that the plaintiff and the 1<sup>st</sup> defendant intend to take advantage of their own wrongful illegalities as the plaintiff does not disclose when he took possession of the suit premises. The applicant is therefore disentitled to any relief from this court.
- Further reason for disentitlement to the reliefs from this court, is by reason of the fact that the applicant has not demonstrated the losses, they stand to suffer, and even if such losses are likely to occur, the plaintiff will recover the same from the 1<sup>st</sup> defendant.

In his oral highlights, counsel adopted their submission in HCCC A 162/2009 and added:-

- Since the plaintiff purports to have acquired title from the 1<sup>st</sup> defendant, no title was ever acquired because the 1<sup>st</sup> defendant had no title to pass to the plaintiff.
- Stress that the 2<sup>nd</sup> defendant did not vacate the premises but was unlawfully evicted and the court, rightly reversed that situation.
- Despite the allegation that the plaintiff is innocent, as the leases were entered into before the expiry of the tribunal orders.
- Case law demonstrates that there is jurisdiction to evict the installed tenant and reinstate the

unlawfully evicted tenant.

In response to those submission, stated that the discrepancy in the leases has been explained and collusion is an allegation and that non disclosure exists and operates against the 2<sup>nd</sup> defendant.

On case law the court, was referred to the celebrated case of GIELLA VERSUS CASSMAN BROWN AND COMPANY LIMITED (1973) EA 358 which laid down the ingredients for granting an injunctive relief namely:-

(iv) *An applicant must show a prima facie case with a probability of success.*

(v) *An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury.*

(vi) *When the court, is in doubt, it will decide the application on the balance of convenient.*

The case of FLUID AND POWER SYSTEMS LIMITED VERSUS KALSI (1991) KLR 584 where Bosire J as he then was (now JA) held inter alia that “*a lease agreement is a contract between parties. The court, lacks jurisdiction to modify or vary the terms thereof.*”

(2) *A party who comes to court, and obtains ex parte orders either on the basis of a false affidavit, or having with held from the court, certain material facts disentitles himself to the orders sought.*

The case of RAKI INVESTMENTS COMPANY LIMITED AND THREE OTHERS VERSUS CO-OPERATIVE BANK OF KENYA LIMITED NAIROBI MILIMANI HCCC NO. 545 OF 2004 decided by F.A. Azangalala J on the 27<sup>th</sup> day of September 2006 where an injunctive relief was granted because:-

- The defendant had failed to comply with the plaintiffs instructions to reduce the indebtedness.
- The argument was not an account but issues of over payments.
- There was arguments that the securities might be invalid.

The first defendants adopted their written skeleton arguments in HCCCA 162/2009 where learned counsel quoted the decision in the case of BAO INVESTMENT AND OFFICE MANAGEMENT SERVICE LIMITED VERSUS HOUSING FINANCE OF KENYA LIMITED KISUMU HCCC 75 OF 2005 decided by Mwera J on the 29<sup>th</sup> day of May 2006, REPUBLIC VERSUS COMMISSIONER OF POLICE NAIROBI HCCC MISC APPLICATION 447/2005, ANDREW OUKO VERSUS KENYA COMMERCIAL BANK LIMITED NAIROBI MILIMANI HCCC NO. 558 OF 2004 decided by F.A. Azangalala on the 30<sup>th</sup> day of May 2005, BANK OF CREDIT AND COMMERCE INTERNATIONAL OVERSEAS LIMITED VERSUS SUN PRODUCE EXPORTERS LIMITED AND THREE OTHERS NAIROBI HCCC NO. 315 OF 1989 decided by Rawal J on the 22<sup>nd</sup> day of March 2002. KENYA ASSEMBLIES OF GOD AND ANOTHER VERSUS KENYA POWER AND LIGHTING COMPANY LIMITED MOMBASA HCCC NO. 68 OF 2004 decided by Khaminwa J on the 19<sup>th</sup> day of November 2004, and lastly the case of MUIGAI AND OTHERS NAIROBI HCCC NO. 346 OF 2002 decided by Kihara Kariuki J on the 16<sup>th</sup> day of April 2004. The theme running through all these decisions is that, a party who obtains ex parte orders on the basis of un disclosed material particulars risks having them discharged and infact the court, should move to discharge the same as soon as it is brought to the courts', attention.

The learned counsel for the 2<sup>nd</sup> defendant also relied on written submissions in the CA file. The cases referred to are UGANDA VERSUS SERVICE HOTELS LIMITED (1969) 2AER 692, HDKINSON VERSUS HADKINSON (1952) AER. 567, THE COACH SAFARIS LIMITED VERSUS SHARIF HUSSEIN NAIROBI HCCC NO. 3702 OF 1995 decided by Waki J as he then was (now JA) on the 14<sup>th</sup> day of February 1996, RAMJAN EBRAHIM AND ANOTHER VERSUS REVEREND MARGARET

WANJIRU NAIROBI COMMERCIAL HCCC NO. 467 OF 2000 decided by Onyango Otieno J as he then was (now JA) on the 30<sup>th</sup> day of May 2000, BELLE MAISON LIMITED VERSUS YAYA TOWERS LIMITED (1992) LLR 170 HCK and lastly the RIPPLES LIMITED VERSUS KAMAU MUCUHA NAIROBI HCCC NO 4522 OF 1992 decided by Mwera J in 1992. The central theme running in all these decisions is as follows:-

1. Court orders must be obeyed in obedience and not in breach.
2. It is the duty of everyone to whom a court order, is addressed to obey the same.
3. A court, will not hesitate to reinstate a tenant unlawfully evicted from rental premises. If it is demonstrated that the effected tenant has been evicted in a high handed, oppressive manner and with impunity.
4. A litigant who has acted in blatant defiance of legal procedures and the law should not be allowed to benefit from his wrong.
5. Where a litigant has acted in a high handed and oppressive manner and in blatant disrespect of the law, will not escape an injunctive relief against him solely because he is in a position to pay damages.

This court, has given due consideration to the rival arguments advanced by both sides, in the light of principles of law established by case law relied upon by each party, as set out above, and the question for determination is whether the applicant herein has earned the relief sought on the basis of the facts demonstrated herein.

The relief that the applicant seeks are 3, namely, an interim injunctive relief, a mandatory injunction and costs.

In order to succeed in his plea for an injunctive relief, the applicant is obligated to bring himself within the ambit of the ingredients for granting an injunctive relief as established by the decision in the case of GIELLA VERSUS CASSMAN BROWN (SUPRA)

The first ingredient is the requirement of the establishment of a prima facie case with a probability of success. The sum total of the plaintiff/applicants as demonstrated by the averments in the plaint, deponement and submissions is that they are innocent tenants having lawfully entered into between them and the first defendant which lease was allegedly brought to an end by the unlawful actions of the 2<sup>nd</sup> defendant. The lease document relied upon to assert those rights have been exhibited by both the 1<sup>st</sup> defendant and applicant. The copy of the 1<sup>st</sup> defendant reads that it was executed on the 20<sup>th</sup> day of March 2009. Whereas that of the applicants reads 30<sup>th</sup> day of March 2009. It is also to be noted that the date in the copy exhibited by the 1<sup>st</sup> defendant is written in free hand, where as that exhibited by the applicant has been typed in. It is therefore the finding of this court, that in order for the rights of the applicant to be properly anchored on the said lease documents, their authenticity has to be established first.

The second ingredients to be satisfied is one which requires establishment that damages will not be an adequate remedy. The damages enumerated by the applicant are loss of rent, business, clientele . They had been in the premises for less than 10 days. No books of account or lists of clientele. In inconvenienced the 2<sup>nd</sup> defendant has argued that all these such as rent paid, loss of business can be quantified and paid for in terms of monetary damages.

It is now trite that a litigant who can be compensated for by way of damages will non the less earn an injunctive relief, where it can be demonstrated that the opposite party has acted in a high handed, oppressive and in blatant disrespect of the law towards the opponent.

The applicants' opponents herein, are the defendants. The 1<sup>st</sup> defendant had claimed breach of the lease

alleging that he had no hand in reinstatement of the 2<sup>nd</sup> defendant, into the suit premises. That it is the second defendant who acted on his own.

Turning to the version of the 2<sup>nd</sup> defendant, it is their assertion that indeed a tribunal dispute existed between the defendants.

- That as an indication of intention of the 1<sup>st</sup> defendant not to obey the outcome should it be against them, is evidenced by the fact that during the pendency of the said proceedings, the 1<sup>st</sup> defendant purported to enter into a lease agreement with a 3<sup>rd</sup> party who has turned out to be the plaintiff/applicant.
- That the decision of the tribunal was in favour of the 2<sup>nd</sup> defendant in that he has 30 days to remain in the premises which order, the 1<sup>st</sup> defendant disobeyed by moving to evict them on the same date that the orders were made. That being the case, the 2<sup>nd</sup> defendant was entitled to seek the courts', intervention for reinstatement. That he was rightfully installed in the premises and it is his rights are superior to those of the applicant. Further that allowing the claim of the applicant will be tantamount to aiding the 1<sup>st</sup> defendant benefit from his wrong.

Due consideration has been made by this court, of the said argument and the court, makes a finding that the rights of the applicant stem from the 1<sup>st</sup> defendant's capacity to let out the premises at that point in time. In the absence of a denial by the 1<sup>st</sup> defendant that the tribunal orders gave the tenant 30 days within which to move out, protecting the interests of the plaintiff/applicant will amount to shielding the breach of the tribunal's orders and allow the 1<sup>st</sup> defendant to benefit from his wrong doing. This court, has judicial notice of the fact that the tribunal has no enforcement powers. This being the case, the beneficiary ought to have gone to the mandated competent court, of law to have the same adopted as a court, order before enforcement. The 1<sup>st</sup> defendant is silent on how the 2<sup>nd</sup> defendant left the premises. The 2<sup>nd</sup> defendant asserts eviction. The court, believes this assertion because no explanation has been given by the 1<sup>st</sup> defendant as to why the 2<sup>nd</sup> defendant could move out of the premises voluntarily and then seek reinstatement shortly, thereafter. The only reasonable conclusion to be drawn is that they were forcefully evicted became aggrieved and sought the courts', intervention.

In the circumstances of this case, where the 1<sup>st</sup> defendant's action cannot be protected, then the only remedy available to the applicant is on the award of damages.

Turning to the balance of convenience, it is clear that on the facts, the balance tilts in favour of protection of the 2<sup>nd</sup> defendant. As regards issuance of a mandatory injunction, the position in law is that, this is usually awardable where the facts are clear and straight forward as demonstrated by case law cited. The applicant's case is not deemed straight forward for the following reasons:-

- The authenticity of the lease documents is in dispute.
- Intention of executing one during the pendency of the tribunal proceedings gives rise to an assumption that the 1<sup>st</sup> defendant was prepared to disobey orders if granted against him.
- The tribunal orders were against the 1<sup>st</sup> defendant in that they appear to have wanted immediate vacation by 2<sup>nd</sup> defendant and were not happy at the 30 days given.
- The tribunal orders were valid and deserve obedience.
- Allowing the applicant's claim to stand will amount to sanctioning the 1<sup>st</sup> defendant's wrong.
- By reason of what has been stated above, the 1<sup>st</sup> defendant had temporary incapacity to lease out the suit premises that right could only arise at the expiry of 30 days from 27/3/2009.

There was issues raised about the 2<sup>nd</sup> defendant being disentitled to protection on account of failure to disclose material particulars when he sought the courts', intervention, namely that he had sought the same relief from the tribunal and a ruling was awaited as at he time the courts', intervention was sought. The accusation came from both the plaintiff/applicants and the 1<sup>st</sup> defendant. The accusation by the plaintiff/applicant cannot hold because no rights flow from the 2<sup>nd</sup> defendant to applicant. It is only that of the 1<sup>st</sup> defendant which can hold if the same is well founded. The court, has given due consideration of this and finds that the same cannot hold in favour of the first defendant because:-

- (a) In as much as the 2<sup>nd</sup> defendant is accused of non disclosure, the 1<sup>st</sup> defendant is guilty of the same non disclosure as he failed to disclose that indeed the tribunal gave the tenant 30 days from 27/03/2009 within which to move from the premises.
- (b) Upon pronouncing the orders of 27/03/2009 the tribunal had no other mandate to deal with the matter. Disclosure or making of consequential orders in respect of the same would have been in consequential.
- (c) Construing that against the 2<sup>nd</sup> defendant would have sanctioned the 1<sup>st</sup> defendant unlawful disobedience.

For the reasons given in the assessment, the applicants application dated 15<sup>th</sup> day of April 2009 and filed the same date of 15<sup>th</sup> day of April 2009 for the following reasons:-

1. The documents in which the applicants claim to relief are the two leases one exhibited by the 1<sup>st</sup> defendant and the other one by the applicant bear different dates and as such their authenticity has to be established.
2. The applicant/plaintiff draws rights from the 1<sup>st</sup> defendant who purported to let out the suit premises in defiance of the tribunals' orders of 27/3/2009. This being the case, protecting the relief the applicant prayed for will amount to sanctioning disobedience of the tribunal's orders.
3. By reason of what has been stated in number 1-2 above, the existence of a prima facie case with a probability of success in favour of the applicant does not rise.
4. Entitlement to an injunctive relief where damages are adequate does not arise in favour of the applicant as on the facts demonstrated, during the pendency of the tribunal orders, the 1<sup>st</sup> defendant had no capacity to lease out the premises till after the expiry of 30 days from 27/3/2009.
5. Mandatory injunction does not lie in favour of the applicant because the claim is not based on clear and straight in view of what has been stated in number 1-5 above.
6. The balance of convenience does not tilt in favour of the applicant because the origin of the title to lease is tainted by the unlawful disobedience of the 1<sup>st</sup> defendant of the tribunals.
7. Damages will be adequate compensation in view of the short duration of the tenancy.
8. The 2<sup>nd</sup> defendant having been a beneficiary of protective orders, from the tribunal was entitled to seek protection from the competent forum.
9. Events leading to these proceedings were sparked off by actions of the 1<sup>st</sup> defendant. For this reason the 1<sup>st</sup> defendant will pay costs to both the applicant and the 2<sup>nd</sup> defendant.

DATED, READ AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2009.

**R.N. NAMBUYE**

**JUDGE**