



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 347 of 2009

PASTOR JOSEPH KARIUKI NJOROGE T/a

DELIVERANCE CHURCH GITHUNGURI .....PLAINTIFF/APPLICANT

VERSUS

NDUNGU NJAU ..... DEFENDANT/RESPONDENT

RULING

1. The application before the court is a Chamber Summons dated 29<sup>th</sup> June, 2009 brought under the Provisions of S.3A, 63(e), Order XXXIX Rules 1(a) 1, 2, 2A, 1 & 9 of the Civil Procedure Rules and Cap 301 of the Laws of Kenya. (sic)
2. The application is supported by the affidavit of *Joseph K. Njoroge* dated 29<sup>th</sup> June, 2009 & a Supplementary Affidavit by the said person dated 10<sup>th</sup> July, 2009 and on the grounds on the face of the application.
3. The application is seeking for the following orders:-
  - (a) **This application be certified as urgent and be heard ex-parte at the first instance.**
  - (b) **The Respondents by themselves, or each of them or anyone of their agents, servants, employees, and/or any one taking title from them be restrained from evicting the Applicant, its agents, employees or servants, and be restrained from taking possession or attempting to take possession, entering or breaking into violating peace or otherwise, or interfering with the Applicant's tenancy or exercising proprietary rights as concern terminating or purporting to terminate the Applicants' possession of the premises on property known as L.R. No. Githunguri/Githunguri/1073 until the full hearing and determination of the reference filed in the Business Premises Rent Tribunal, Number 34 of 2009 (KBU) and/or the determination of the suit filed herein or further orders of this Honourable Court (sic).**

(c) **The Applicant do hereby give an undertaking to indemnify or compensate the Respondent for any damages that he may lawfully suffer during the time of the interim injunction orders issued herein.**

(d) **The Officer in Charge of Station (O.C.S) Githunguri Police Station to supervise the compliance of the orders of this Honourable Tribunal and ensure that peace prevails.**

(e) **Any further orders or reliefs that may be found fair and just**

(f) **The costs of this application be provided for.**

Prayers a & c are spent. The ruling will be confined to the other prayers in the application.

4. The Respondent opposed the application by filing a Replying Affidavit dated 3<sup>rd</sup> July, 2009 & a further replying affidavit dated 16<sup>th</sup> July, 2009.

5. The Applicant contends that it has been a lawful tenant of the Premises since 2002 at a monthly rent of **Kshs.5000/=**. That on the 11<sup>th</sup> day of June, 2009 the Defendant issued a notice terminating the tenancy. The Applicant is a church with a large congregation. It has various religious activities including a bible school. The Applicant also states that it has in the course of tenancy rehabilitated, restored and maintained the suit premises. Further that there is currently a reference pending in the Business Rent Tribunal regarding the subject matter. The Applicant is seeking for injunctive orders pending hearing and determination of the Reference being Tribunal reference No. 34 of 2009 (KBU) or pending further orders of this court, as failure to get the orders, its religious activities and its congregation will suffer irreparable loss & damage.

6. On his part the Defendant contends that the Business Rent Tribunal has no jurisdiction in the matter as the tenancy is for a period of 6 years and therefore the tenancy is not protected. That the property has been sold to a third party, the **Vision Victory Church** and the Defendant has to hand over the Property with vacant possession. The defendant contents further that the Plaintiff has not demonstrated *prima facie* case with a probability of success.

7. Having considered the submissions by learned counsel and the authorities cited I find that the Application is properly before the court, for two reasons, firstly if it is true, as stated by the Respondent that the Business Tribunal has no jurisdiction in handling this, then that the Applicant has rightly referred this matter to the High Court. Secondly even if as the Plaintiff pleads, that the Business Premises Rent Tribunal has jurisdiction the said tribunal has no powers to issue the injunctive relief being sought and therefore, the application is properly filed. I am in this regard guided by the case of *Caledonia Supermarket vs. Kenya National Examination Council* [2002] E.A at 357 C.A.

In the case of **GIELLA vs. CASSMAN BROWN & CO. LTD & ANOTHER** [1973] E.A. 358, the Court of Appeal for East Africa laid down the applicable conditions in granting of an injunction as follow: -

First the Applicant must show a *prima facie* case with a probability of success at the trial, if the court is in doubt, it should decide the application on balance of convenience. Secondly, normally an interlocutory injunction will not be granted unless the Applicant would suffer an injury which cannot adequately be compensated in damages. Those conditions have been reiterated in several subsequent decision of the

Court of Appeal for East Africa, the Kenyan Court of Appeal and the High Court.

8. In the circumstances of the case I find that the Applicant has satisfied the standard set by the said case of **Giella vs. Cassman Brown & Co. Ltd & Another [1973] E.A.**, in that they has filed a reference in the Business Premises Tribunal, its case being that it is a protected tenant, The said reference is pending hearing and that if eviction takes place before hearing and determination of the reference its activities and its members will suffer irreparable loss and damages. I find on this score that the applicant has proved a prima facie case with a probability of success. The applicant is a church and I am of the view that if interfered with its activities and indeed its members are likely to suffer loss and damage, if I am wrong on the 2 grounds above, I find that the balance of convenience tilts in favour of the Applicant.

9. I therefore grant prayers 2 and 4 of the Chamber Summons dated 29<sup>th</sup> June, 2009. Costs be in the cause.

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

**ALI-ARONI**

**JUDGE**