



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Suit 13 of 2009

1. Civil Law
2. Civil Practice and Procedure
3. Subject of main matter
 - a) Landlord/Tenant relationship (18.2.09)
 - b) Distress of Rent
 - c) Injunction to restrain the defendants from removing and or interfering with plaintiff's quiet possession
Chamber summons 25th February, 2009 (Mitey J)
 - d) Wrongful attachment
4. **Arguments of application 15th October, 2009**
 - a) Auctioneers locked applicant's premises
 - b) Items locked included motor vehicle belonging to customers
 - c) 9th March, 2009 – premises by consent remain locked.
 - d) Advocates obtained entering judgment 24th April, 2009 – when in fact it was a forgery.
 - e) No orders of eviction.
 - f) Constitutional reference
 - g) No legal authority to act.
5. In reply CAD's not party to suit
6. **Held**
 - a) Premises to remain closed for only the portion that was separated by a wall with CADS motors.
 - b) The status of case to be returned. Premises remain closed till finalized constitution reference LR 631/1/11
 - c) CAD's motors should have applied to enjoin to suit
 - d) Persons responsible respondent NO. 1.
7. **Case Law**
8. **Advocate**

Plaintiff/applicant in person – present

I.O. Meroka advocate instructed by M/S Meroka & Co. advocates for the 3rd Defendant/Respondent and instructed to hold brief for T.M. Maosa advocate instructed by M/S Maosa & Co. advocates for the 1st and 2nd Defendants/Respondents - present

EXPRESS AUTOMOBILE KENYA LTDPLAINTIFF/APPLICANT

VERSUS

KENYA FARMERS ASSOCIATION.....1ST DEFENDANT/RESPONDENT

LIFEWOOD AUCTIONEER (K) LTD2ND DEFENDANT/RESPONDENT

CADS MOTOR LTDINTERESTED THIRD PARTY

RULING

I: Background

1. The subject of the main suit is that of Landlord/Tenant.
2. The applicant herein was the tenant to the 1st respondent M/S Farmers Association Ltd. The rents charged from Kshs. 20,000/= to Kshs. 40,000/= with the consent of the applicant. He was, on behalf of his company, unable to pay the said rents. The landlord levied for distress. The applicant went to the Business Premises tribunal which had no jurisdiction to determine the dispute.

3. The applicant went to Nakuru High Court and finally back to the High Court at Kericho. He applied for an injunction. This court declined to issue orders of an injunction.
4. The applicant's premises was closed. His attempt on behalf of his company to serve a document purported issued by the Deputy Registrar at Kericho that proved to be a forgery.
5. On 9th March, 2009 the parties agreed, pending the hearing of injunction orders application, the premises do remain closed and the applicant do enjoin M/S CAD motor as co defendants.
6. The advocate holding brief for Mitey J declined to submit. The prayers for injunction were dismissed.
7. Investigation as to the forged decree orders for an objection proceedings is still pending.
8. The Defendants then purported to apply for Interlocutory Judgment. There is no such notice on interlocutory judgment that had been granted. No such interlocutory judgment was on record. No response to date from the "Advocate's Complaint Commission" was given.
9. This file was placed before the Hon. the Chief Justice for directions.
10. 16th September, 2009, a constitutional bench was appointed.
11. The bench returned the file to the High Court of Kenya to determine application 15th October, 2009. Namely, to issue a mandatory order to have the 3rd respondent return all the equipments and goods belonging to the plaintiff/applicant. That a wall be rebuilt between LR 631/1/11 Moi Highway between the two areas.
12. The grounds being there never was an issue of Eviction but that of distress of rent.

III: Opinion

13. The CADS motors were to be enjoined to the suit. They have not. The said CADS motors ought to have taken the initiative to be enjoined.
14. This suit was originally that of distress of rent. It was not an eviction. The applicant required to pay his rent if he doesn't, then levy of distress should not be stopped.
15. Both parties have come to court with unclean hand. The applicant had a forged and or false document issued for objection proceedings through the Ag. Deputy Registrar without permission or orders of the court. The respondent No. 1 had issued and acted upon a non existent Interlocutory judgment to move into the premises and place another therein. Interlocutory judgments did not exist in this matter nor any orders made.
16. Nonetheless the parties are before the constitutional Court. That the status of the premises is required to remain as it is till the determination of that constitutional matters. That is, the premises remains closed being LR 631/1/11 separated by a wall with CADS motors. That this area remain closed with the walls returned till the finalization of the constitutional matters. Respondent No. 1 be and is hereby responsible in ensuring that this is done on its premises.
17. The costs will be in the case.

18. This matter be returned to the constitutional court for hearing on or before 2nd December, 2009 at Nairobi.

DATED this 23rd day of November, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Plaintiff/applicant in person – present

I.O. Meroka advocate instructed by M/S Meroka & Co. advocates for the 3rd Defendant/Respondent and instructed to hold brief for
T.M. Maosa advocate instructed by M/S Maosa & Co. advocates for the 1st and 2nd Defendants/Respondents - present