

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Appeal 171 of 2008

ANN MWAURA & OTHERS.....APPELLANT

VERSUS

DAVID WAGATUA GITAU & OTHERS.....RESPONDENTS

RULING

The appellants are protected tenants in the respondents' premises situate at Gilgil and known as **Parcel Number 1317/120**. On 14th June 2008 the respondents served them with termination notices under **Section 4(2)** of the **Landlord and Tenants (Shops, Hotels and Catering Establishments) Act Cap 301 of the Laws of Kenya**. Threatened with that notice, the appellants filed Nakuru CMCC No.620 of 2008 and applied for injunction to restrain the respondents from evicting them. The respondents raised a preliminary objection in that suit before the hearing of the application and in his ruling of 12th November 2008 the Resident Magistrate upheld it and dismissed the suit on the ground that the Chief Magistrate's court lacked jurisdiction in matters of Landlord and Tenant like the one before him. That provoked the present appeal.

Simultaneous with the filing of the appeal the appellants filed a notice of motion dated 14th November 2008 and sought a temporary injunction under **Order 41 Rule 4(6)** of the **Civil Procedure Rules** as well as **Section 3A** of the **Civil Procedure Act** to restrain the respondents from evicting the appellants from their said business premises or in any other manner from interfering with their peaceful possession, enjoyment and occupation until this appeal is heard and determined.

The application is premised on the ground that the respondents have threatened to evict the appellants from these premises. The respondents opposed the application on the ground that the eviction notices were served upon the appellants when they refused to pay the increased rent. They further contend that the appellants are not paying even the old rent and their application should therefore be dismissed.

This being an interlocutory application I cannot make any definitive findings which may prejudice the hearing of the appeal itself. However, having perused the record of appeal, I am satisfied that the appellants have an arguable appeal. In the circumstances I grant this application and order the pending the hearing and the final determination of this appeal the respondents are hereby restrained from evicting the appellants from their said business premises or in any other manner from interfering with their peaceful possession, enjoyment and occupation. As it is alleged that the appellants are not paying the rents due I direct that they cause this appeal to be heard within six months failing which the injunction granted herein shall lapse. The respondents should also regularly pay the old rents. The costs of this application shall be costs in the appeal.

Dated and delivered this 12th day of November, 2009.

D. K .MARAGA

JUDGE.