



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

**CIVIL SUIT 264 OF 2007**

**AGRINER DEVELOPMENT LIMITED.....PLAINTIFF**

**VERSUS**

**W. K. MARTIN, J. R. NJENGA, D. MBELA being sued as the trustees of agricultural**  
**society of Kenya & ANY OTHER TRUSTEES ELECT.....DEFENDANTS**

**R U L I N G**

**The plaintiff filed suit against the defendants, in their capacity** as the trustees of the Agricultural Society of Kenya, seeking several declaratory orders of the court. The plaintiff, *inter alia*, sought a declaration that the lease granted to the plaintiff by the defendant was not determinable at the option of the defendant except where the plaintiff breached the terms and obligations thereof. It further sought a declaration of the court that the plaintiff was entitled to occupy the leased premises on a continuous basis and that the defendant was not entitled to terminate the said lease and further estopped from terminating the said lease as the plaintiff had made huge investments in developing the leased premises.

Contemporaneous with filing suit the plaintiff filed an application under the provisions of **Order XXXIX Rules 1, 3 and 9** of the **Civil Procedure Rules** and **Sections 3A and 63 (c) and (e)** of the **Civil Procedure Act** seeking the following order of this court:

*“That this Honourable Court issue a temporary injunction restraining the Defendant Society, its agents or servants from terminating the License and or Leases, taking possession or interfering with the Plaintiff’s right to quiet possession and enjoyment of the premises known as **B1.30, T42-43 and AI. 4 & 4A** situated within Jamhuri Park Showground, Nairobi pending the determination of the suit herein.”*

The grounds in support of the application are on the face of the application. The application is supported by the annexed affidavit of Adi Vinner. The application is opposed. Batram Muthoka, the Chief Executive Officer of the Defendant Society swore a lengthy replying affidavit in opposition to the application. At the hearing of the application, I heard the submission made by Mr. Kisaka on behalf of the plaintiff and by Miss Mitema on behalf of the defendant. I have carefully considered the pleadings filed by the parties in this suit in support of their respective positions. I have also considered the rival submissions made in this application. The issue for determination by this court is whether the plaintiff established a case to enable this court grant it the order of interlocutory injunction sought. The principles to be considered by this court in determining whether or not to grant an order of injunction are well settled. In **Giella vs Cassman Brown [1973] EA 358** at page 360 Spry VP held that:

*“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa.*

*First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (E.A. Industries v. Trufoods, [1972] E.A. 420.)”*

Certain facts are not in dispute in this application. It is not disputed that the plaintiff and the defendant entered into various agreements by which the defendant leased to the plaintiff certain premises within the Agricultural Showground at Jamhuri Park. The said lease agreements were in form of licences which the defendant granted to the plaintiff to occupy the said premises. From the wording of the agreement, it is clear that although the agreement was said to be for a period of five years, it only related to the period when the Agricultural Show was in session. It is apparent that apart from the licence agreement that allowed the plaintiff to occupy the stalls during the agricultural show period, the defendant allowed the plaintiff to occupy the said stalls during the period when the show was not in session. It is evident that the plaintiff occupied the said premises through out the year. In fact, the plaintiff commenced manufacture of pesticides in the premises that it had leased from the defendant. There appears to have been an arrangement in which the plaintiff paid some form of monthly rent to the defendant to enable it conduct its business in the leased premises during the period other than the show period.

A disagreement arose between the plaintiff and the defendant when the defendant, through its Chief Executive Officer, notified the plaintiff that it would terminate the lease granted to it with effect from 1<sup>st</sup> January, 2007. According to the defendant, the said lease was terminated by effluxion of time. The plaintiff took issue with the said notice. According to the plaintiff, it understood that it had been granted a lease which was open ended and not capable of being terminated by the defendant unless the plaintiff was in breach of the terms and conditions of the lease. My evaluation of the facts of this case clearly point to the fact that there is a misunderstanding as to the nature of the relationship between the plaintiff and the defendant. Whereas the plaintiff understood the agreement to imply that it had a valid lease for a period of five years which was capable of being renewed, on its part, the defendant is of the view that the agreement created a licence which entitled the defendant to terminate the said licence upon expiry of expressed term of five years.

It seems that the confusion of the nature of the relationship between the plaintiff and the defendant was caused by the fact that the agreement which was entered between the plaintiff and the defendant was a standard agreement which was prepared by the defendant in respect of persons who hired stalls at the show ground to exhibit their goods or products during the period when the agricultural show is in session. The said agreement did not contemplate the situation that the plaintiff now finds itself in i.e. the plaintiff is in actual fact a month to month tenant in the said lease premises undertaking manufacturing business. My interpretation of the said agreement is therefore that the agreement is a licence that allowed the plaintiff to exhibit its products during the period when the show is in session and does not grant it a lease, in the ordinary sense, to occupy the said premises to operate a manufacturing business or any other businesses all the year round.

In the premises therefore, this court having found that the agreement in respect of the leased premises is a licence, the same is liable to be terminated upon reasonable notice being issued. This court however notes that the defendant is partly responsible for the situation that the plaintiff finds itself in. The plaintiff undertook extensive renovation of the leased premises in the understanding that it was to occupy the said premises for a long and indeterminate period. I hold that before the defendant can terminate the licence, it has to take into account the developments that the plaintiff has undertaken on the suit premises and if need be compensate the plaintiff for the said developments. It is clear that the plaintiff purchased some of the permanent structures erected on the suit premises with the permission and authority of the defendant. The defendant is therefore aware of the value of the said improvements made on the leased premises. The defendant cannot therefore revoke the licence without taking into consideration the said developments. The plaintiff has therefore, to that extent, established a prima facie case.

Since it appears that the relationship between the plaintiff and the defendant has soured, I will grant a temporary injunction which shall subsist for a period of six (6) months from today's date. During this

period the plaintiff shall pay all the arrears due to the defendant in respect of the said leased premises. It shall also pay the monthly rent when the same is due. If the defendant is still desirous of revoking the licence, then during this period it is directed to negotiate with the plaintiff with a view of compensating the plaintiff for the developments that it has undertaken on the said suit premises. The injunction granted herein shall lapse on expiry of six (6) months. Either party shall be at liberty to apply. There shall be no orders as to costs in this application.

**DATED at NAIROBI this 17<sup>th</sup> day of APRIL, 2008.**

**L. KIMARU**

**JUDGE**