



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

**Civil Appeal 34 of 2008**

**AMINA ABDI MUMIN .....APPELLANT**

**VERSUS**

**SHARIFF MOHAMED OMAR .....RESPONDENT**

**R U L I N G**

Amina Abdi Mumin, the appellant herein, took out a summons dated 12<sup>th</sup> March 2008 in which she prayed for an order of injunction to restrain Shariff Mohamed Omar, the Respondent herein, from removing the goods proclaimed from the appellant's house on 14<sup>th</sup> December 2007 pending the hearing and determination of this appeal. When served with the aforesaid summons, the Respondent filed a notice of preliminary objection dated 15<sup>th</sup> April 2008 to oppose the application. The preliminary objection had to be disposed of first before hearing the substance of the summons.

It is the submission of Mrs. Makone, learned advocate for the Respondent that the application is resjudicata. It is said that the issues raised herein had been heard, considered and determined in Mombasa H.C.C.A. No. 187 of 2007. Mr. Hassan, learned advocate for the appellant opposed the Preliminary Objection claiming it is a continuation of the attempts by the Respondent to evict the appellant. The learned advocate stated that the application in H.C.C.A. No. 187 of 2007 was for a return of the goods attached which this court gave conditions . The learned advocate stated that the conditions were too difficult for the Appellant to meet. It is said the Respondent attached the goods on 14<sup>th</sup> December 2007 while the ruling was pending for 20<sup>th</sup> December 2007, hence the appellant had no option but to take out these proceedings.

I have considered the submissions of both learned counsels. I have also perused the material placed before me. It is not in dispute that this court delivered its ruling on 20<sup>th</sup> December 2007 in respect of the summons dated 24<sup>th</sup> October 2007. In that summons, the appellant had sought for an order of injunction to restrain the Respondent from selling the good removed from the appellant's house pending the hearing and determination of the appeal. In the end this court allowed the application on three conditions i.e.

- (i) The appellant to deposit the arrears of rent at the rate of the rent before increase in Respondent's advocate's office.
- (ii) Continue paying the monthly rent before increase to the Respondent's advocate's office.
- (iii) To pay into a joint interest earning account in the names of the advocates of the amount of the increased rent.

In the current application, the appellant is seeking for an order

seeking to restrain the Respondent from removing goods allegedly proclaimed on 14.12.07. It is obvious that the application

was filed after this court had delivered its ruling of 20.12.2007. After

a careful consideration of the issues raised therein, I am convinced

that the appellant has attempted to circumvent the orders of this court

by filing a near similar application seeking for similar orders. It is apparent from the application that the appellant had failed to comply with the conditions set in the ruling delivered by this court on 20<sup>th</sup> December 2007. The issues raised are the same, the parties are the same and the dispute concerns the same subject matter. I am convinced the summons dated 12<sup>th</sup> March 2008 is res judicata. For the above reasons I uphold the Preliminary Objection by dismissing the application with costs to the Respondent.

Dated and delivered at Mombasa this 10<sup>th</sup> day of July 2008.

**J.K. SERGON**

**J U D G E**

In open court in the presence of Miss Matara h/b Hassan for Appellant and Munyithya for Respondent