



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

ELC Civil Case 420 of 2008

SIGMA FEEDS LIMITEDPLAINTIFF

V E R S U S

METCOURT HOSTELS LIMITEDDEFENDANT

R U L I N G

I. APPLICATION FOR INJUNCTION DATED 28th AUGUST 2008

I: Background

1. M/s Sigma Seeds Ltd a business concerns dealing with animal feeds had its business and headquarters situated on land parcel LR 2259/66 Bogani Road Karen Estate; which business was in existence since 1984.
2. Their landlord (not party to the main suit) had a relationship with them till 2008.
3. The parcel of land is alleged to have been sold. The new landlords who are said to be M/s Mecourt Hostels Ltd then declined to take their rents and asked that they leave and or on terminating their tenancy.
3. The plaintiffs filed a references to the Business Premises Rent Tribunal claiming protection under the Landlord & Tenant (Shops, Hotels and Catering Establishment) Act Cap 301 Laws of Kenya. They filed this present suit before the High Court of Kenya at Nairobi claiming that for an injunction to be issued in their favour.
4. The application brought under the vacation rules and dated 28th August, 2008 was certified urgent (ruling of 29.08.08) and inter parties hearing taken by consent of the parties.

II: Inter- party hearing

5. The respondent/defendant in reply stated they obtain a loan of Ksh.500,000,000/= to purchase the said property. This sum of money was borrowed from a loan. The property being 114 acres is an agricultural land and as such controlled under Section 6 of the Land Control Act Cap 302 Laws of Kenya.
6. This section reads:-

6(1) Each of the following transaction

(a) The sale, transfer, lease mortgage

exchange, partition and other disposal of a dealing with any agricultural land which is situated within a control area.

(b)

(c)

Is void for all purposes unless the Land Control Board for the land centre control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this act.

2)

3)

7. The augments as I understand it from the defendants is because the 114 acres that they purchased is agricultural land, any dealings of the land must have consent with the Land Control Board. In this case they found the tenants on the land. They do not dispute that the said tenant has been on the land from 1984 to 2008. Such occupancy by the tenant is null and void as there was never any agreement between the former landlord and the tenants appeared through the Land Control Board. Because the transaction was VOID the tenant cannot seek the protection of this court.

8. The defendants argued further that this court has **no** jurisdiction to entertain this case. The tenants do not have the protection of the Business Premises Rent Tribunal and should have never proceeded to that court.

9. In reply the plaintiffs/applicants argued that it is permissible to go to the Business Rent Tribunal but as that court has no powers to issue an injunction then their remedy lies in the High Court. The Land Control Board did not apply to their situation.

III Findings

10. The plaintiffs/tenant have had a relationship with their land lord for 24 years paying regular rent and being tenants in peaceful occupation.

11. The defendant wants to evict them on grounds that the plaintiffs/applicants are not protected. I believe that such drastic steps should have first been taken before the sale agreement was entered into. That there is to my mind a prima facie case to illustrate that the plaintiff/applicant are entitled to the protection of this court.

12. I would accordingly grant an injunction as prayed in the application dated 28th August, 2008 till the determination of their suit.

13. I award costs to the plaintiffs.

DATED THIS 23RD DAY OF SEPTEMBER, 2008 AT NAIROBI

M. A. ANG'AWA

J U D G E

LW.Kamau holding brief for C.N. Kihara instructed by Kihara & Co. Advocates for the plaintiff/applicant – present

M. Kyalo instructed by Amolo & Gachoka & Co. Advocates for the defendant/Respondent – present