

3. The 1st Defendant in her Replying Affidavit sworn on 1.5.2007 deponed that the Applicant was the one who, together with her family, neglected to abide by the terms of the lease agreement dated 29.1.2007 because;

i. She decided to leave the premises without making the necessary repairs.

ii. She refused to pay water and electricity bills before attempting to move out;

iii. She refused to meet with the area Chief and District Officer on various occasions to discuss an amicable settlement to the matter.

4. Further, that motor-vehicle registration number KAQ 190Q was driven away on 11.4.2008 and was no longer on the premises.

5. I have taken into account submissions made on behalf of the parties and I have also perused the decision of *Bosire J*, (as he then was) in Belle Maison Ltd vs Yaya Towers Ltd HCCC 2225/1992 and to my mind prayer (a) is superfluous in view of the matters deponed to in both affidavits filed. It is now agreed that the Applicant's household goods have in fact been removed from the suit premises by the 2nd Defendant to an unclear location. As framed therefore the order sought cannot properly be issued.

6. Regarding prayer (b) of the Application, again it is framed as if the goods are within the suit premises. It has not been denied that the motor vehicle KAQ 190Q has in fact been driven away by the Applicant's son. No mandatory injunction can issue in such an instance and as regards the household goods and personal effects, if they are not in the premises, what orders can this court issue? The Application has not been amended to show that in fact it is the 2nd Defendant who has the goods if at all, in some undisclosed location. How can this court issue any orders with such a flawed Application?

7. The Motion which ought to be a Summons is in any event less than serious and is quickly dismissed with costs to the Defendants.

8. Orders accordingly.

Dated and delivered at Machakos this 17th day of November 2008.

Isaac Lenaola

Judge

In the presence of: Mr. Mutinda h/b for Mr. Mureithi for Applicant.

Isaac Lenaola

Judge