



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CIVIL SUIT 122 & 119 OF 2006**

**JOSEPH WAINAINA IRAYA**

**T/A QUEEN CHIC INN ..... PLAINTIFF**

**VERSUS**

**H. E. DANIEL ARAP MOI ..... 1<sup>ST</sup> DEFENDANT**

**SHADRACK NGUGI KAMAU**

**T/A BLACKIE AUTO SPARES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

I have considered the applications made on behalf of the Plaintiff and the Second Defendant. I do hereby grant leave to the Plaintiff and the Second Defendant to file their respective appeals against my ruling, if this be necessary.

With regard to the oral application for a temporary injunction pending the filing of a formal application for injunction in the Court of Appeal or pending the filing of an appeal, I do make the following findings/decision.

Firstly, I do not think I can invoke the provisions of Section 3A of the Civil Procedure Act in the circumstances. This is not an application for stay of execution pending appeal but a fresh application for injunction. A fresh oral application for injunction based on the intended appeal. We have just painfully and tediously gone through vigorous proceedings under Order 39 of the Civil Procedure Rules. This Court has given its Ruling. It has dismissed the applications for injunction with costs. The Court has given its reasons which are on record. It would appear to me to be improper, if not irregular for this Court once again to reissue any injunctive orders pending anything. The applications for injunction are spent and discharged at this level of the High Court. I have once before given some Interim Preservatory Orders pending the filing of an application for an injunction in the Court of Appeal. I am now doubtful whether I was right. Secondly, there were exceptional reasons in the other previous case.

In the present case, I see no exceptional circumstances. I doubt whether strictly I would have any jurisdiction to grant fresh injunctive orders. I do not agree that Order 39, Civil Procedure Rules contemplates such a situation.

Section 66 of the Civil Procedure Act relates to the appellate jurisdiction of this Court when dealing with appeals from the Subordinate Courts and Tribunals. This Court cannot usurp the jurisdiction of the Court of Appeal.

I do hereby reject the informal application for injunctive orders. Costs in the cause.

**Dated and Delivered at Eldoret on this 19<sup>th</sup> January, 2007.**

**M. K. IBRAHIM**

**JUDGE**