



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 1216 of 2006**

**KENGOLD AUTOMOBILES LTD.....PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL.....1<sup>ST</sup> DEFENDANT**

**ITAL PRODUCTS LTD.....2<sup>ND</sup> DEFENDANT**

**RULING**

By this Chamber Summons expressed to be brought under Order XXXIX Rule 1 (a) and 3(1) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, the Plaintiff seeks orders:

1. That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be restrained either by themselves, their servants and/or agents from demolishing the Plaintiff's business premises situated on LR NO. 209/8194 Lunga Lunga Road, Industrial Area Nairobi or in any other manner interfering with the Plaintiff's tenancy on the said premises pending the hearing and determination of this suit.
2. That the 1<sup>st</sup> Defendant be ordered to renew the Plaintiff's Business Licence for the year 2007.
3. That the costs of this application be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in any event.

The application is based on following grounds:-

- (a) In an attempt to evict the Plaintiff from the suit premises, the 1<sup>st</sup> Defendant in collusion with the 2<sup>nd</sup> Defendant has served upon the Plaintiff requiring it either to demolish or allow the demolition of the suit premises within 7 days.
- (b) The Plaintiff who deals with motor vehicle spares stands to suffer great loss, damage and inconvenience should the Defendants make good their threat to demolish the said premises.
- (c) The Plaintiff has filed a suit in the Business Premises being Cause No. 298 of 2006 for the determination of whether or not the Plaintiff should vacate this suit still pending determination and the Tribunal is not sitting currently.
- (d) The 1<sup>st</sup> Defendant's said notice is made in bad faith, illegal and without justification.

(e) The Plaintiff does not have an alternative place to move its business to and a demolition of the said premises will automatically throw the Plaintiff out of business.

(f) It is fair and just to grant the orders sought.

The application is also supported by an affidavit sworn by Praful Shah the Managing Director of the Plaintiff on 20<sup>th</sup> November 2006 in which the Plaintiff avers on facts similar to those contained in the Plaint.

Briefly the facts of this suit as gathered from the pleadings are that the Plaintiff was a tenant of a company known as Hardware & Tools Ltd in the suit premises being LR 209/8194 Lunga Lunga Road, Nairobi. The said company was placed under receivership and was later sold to the 2<sup>nd</sup> Defendant by the Receiver Manager. On 21<sup>st</sup> January 2006 the 2<sup>nd</sup> Defendant issued the Plaintiff with a Notice of Intention to increase the monthly rent from Kshs.20,000/= to Shs.40,000/= which the Plaintiff resisted and filed a reference with the Business Premises Tribunal being Cause No. 130 of 2006 for the assessment of a fair market rent for the said premises which is still pending determination.

On or about March 2006 the 2<sup>nd</sup> Defendant commenced some construction work on the undeveloped area of LR NO. 209/8194 which necessitated the cutting down of trees on the suit premises and hence interfering with environment and the Plaintiff. This made the Plaintiff to make a complaint to the National Environment Management Authority (NEMA). This did not go well with the Defendants and caused the 2<sup>nd</sup> Defendant to serve the Plaintiff with a Notice of Intention to terminate the tenancy.

The Plaintiff filed this suit for orders as prayed in the Plaint and simultaneously with the Plaint he filed this Chamber Summons for injunctive orders.

The principles of granting interlocutory injunction are well established and as stated in the celebrated case of **GIELLA VS. CASSMAN BROWN & CO LTD 19773 EA 358**. These are first, the Applicant must show a prima facie case with a probability of success; secondly an interlocutory injunction will not normally be granted unless it is shown that the Applicant will otherwise suffer irreparable injury which could not be compensated in damages, and thirdly, that if the court is in doubt as to the existence of or otherwise of a prima facie case, it should decide the application on a balance of convenience.

The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

The Plaintiff being a tenant for him to claim a right to be protected he should first establish landlord tenant relationship between him and the 2<sup>nd</sup> Defendant. All that he says is that he was the tenant of the previous landlord.

That being the case, he has failed to satisfy the principles for granting an interlocutory injunction as stated above the **GIELLA VS. CASSMAN BROWN** case.

I therefore dismiss the Plaintiff's Chamber Summons dated 20<sup>th</sup> November 2006 with costs.

Dated and delivered at Nairobi this 24<sup>th</sup> day of April 2007.

**J.L.A. OSIEMO**

**JUDGE**