



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

Civil Case 90 of 2007

1. Land and Environmental Law Division
2. Subject of the main suit – Landlord/Tenant

Not controlled premises

L.R. No. 209/3847

Development House

3. Application for an Injunction 3 May 2007

- a) Plaintiff/tenant locked out of premises
- b) Leave to restrain defendants from disposing of suit items and premises to other parties.

4. In Reply

- a) The Defendant notified Plaintiff that lease was to be renewed on grounds he altered the said premises, was not a clean tenant and failed to pay rents regularly.

Further 3 months lease renewed to give time to the applicant to vacate.

5. Held

- a) No mandatory injunction to issue in an interlocutory application.
- b) Where an injunction is claimed together with damages – no injunction is to issue.

6. Case Law

- a) Mureithi V City Council of Nairobi

(1981) KLR 333

7. Advocate

D. Manjanja for Mohammed Muigai & Co. Advocates for the plaintiff

G. Mutahi for Kipsang & Mutai & Co. Advocates for the defendant

GAWA FISH & CHIPS LIMITED.....PLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION.....DEFENDANT

RULING

I. Background of application 3 May 2007 for an Injunction.

1. The relationship of the parties is that of Landlord (Agriculture Finance Corporation/Defendant herein) and Tenant (Gawa Fish and Chips Ltd, The Plaintiff herein)

2. The Plaintiff was in occupation of the defendant's premises LR 209/3847, Development House from 4 July 2001 where it was running a restaurant . The lease between the parties expired on 3 January 2007. Prior to this expiry date by a letter of 10 July 2006 the tenant was notified that his lease would not be renewed. Despite this the Defendant continued to accept rent until 30 April 2007 when his premises were duly locked up.

3. The Plaintiff filed suit on 3 May, 2007 whereby he sought mandatory orders against the defendant to open up the said premises and to allow him to access their property. He prayed and further sought that the suit premises to be unlocked immediately and that they be awarded exemplary damages.

II. Application 3 May 2007

a) In Reply

4. On being served with this application the defendant/respondent stated that the Plaintiff was an unsatisfactory tenant. They were their tenant for a period of 6 years, a period that was to expired on 31 January, 2007.

5. The tenants were in breach of the lease agreement in that they failed to pay rent and service charge quarterly – modified the suit premises without prior consent of the landlord, flooded the drainage system blocked the same and used a wood stove.

6. They were requested to vacate the premises.

b) Further Reply by Applicant

7. The tenants in reply stated that it, was true rents were received in monthly installments because the defendants/landlords did not object. The drainage had been repaired and the alteration had earlier been made to the premises without permission of the landlord was highly regretted. All this was resolved at a meeting with the defendant held on 4 January 2006. They noted the repairs and alteration required to be done and or made.

8. The Plaintiffs sought, by way of their letter of February, 2006 to renew their lease. This was not

rejected. A subsequent request was made on December, 2006 to review the lease . By a letter of 1 February 2007 a notice was given that the lease would not be reviewed. There was a further three months notice commencing 1 February 2007 to 30 April 2007 to wind up the business and look for an alternative Premises. The Plaintiff failed to heed this notice. The defendant locked up the premises and as a result the plaintiff filed this suit.

II Findings

1. The defendant advocate referred to the case law of:-

Mureithi v. City Council of Nairobi (1981) KLR 333.

The applicant (plaintiff in the superior court) applied for an injunction to restrain the respondent (defendant in the superior court) from demolishing her kiosk. An injunction was refused by the superior court.

On appeal it was held that an injunction is at the discretion of court. They declined to issue an injunction.

In the case law of Kenya Breweries Ltd. V Okeyo (2002) 1 E.A. 109

It was held that a mandatory injunction ought not to be granted on an interlocutory injunction.

9. In this case, argued the respondent, no injunction ought to be issued against them as there is no probability of success.

10. In further reply, the applicant stated that they indeed were in a permanent building and not a kiosk that could be demolished. That the Mureithi case supra did not apply.

III: Findings

10. It is now trite law that for a grant of an interlocutory injunction there must be three things in existence.

- i) The probability of success of the suit
- ii) The likelihood of irreparable loss which would not be compensated by damages.
- iii) And the balance of convenience.

11. The applicant's suit premises have been closed down. He in essence seeks mandatory injunction whereby the said restaurant be opened and that the plaintiff be given access.

12. According to the Kenya Breweries Ltd. V. Okeyo (2002) 1 E.A. 109 case law, mandatory injunction cannot be issued in an interlocutory application. There has been in the past the case law of Yaya Centre by Bosire J. (as he then was) where section 3A was invoked to issue the mandatory injunction.

13. I do not see this is warranted in this situation because where a party claims for prayers of injunction at the same time for damages no injunction ought to be issued.

14. In Conclusion

I believe that the plaintiff has not made out a prima facie case to warrant him to a mandatory injunction. I hereby dismiss this application.

The main suit seeks exemplary damages which should be dealt with in a full trial. I award costs to the

defendant/respondents.

Dated this 24th day of May, 2007 at Nairobi.

M.A. Ang'awa

JUDGE

D. Manjanja for Mohammed Muigai & Co. Advocates for the plaintiff

G. Mutahi for Kipsang & Mutai Co. Advocates for the defendant