



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

**Civil Case 185 of 2007**

**SPRINGBOARD PRODUCTIONS .....PLAINTIFF**

**V E R S U S**

**THE CHURCH OF KENYA.....1<sup>ST</sup> DEFENDANT**

**N. W. REALITE LIMITED .....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

**I Background of application dated 25<sup>th</sup> June 2007**

1. The relationship between the parties is that of Landlord and tenant. M/s The Church Commissioners for Kenya is the landlord of business premises known as ACK Garden House whilst the 2<sup>nd</sup> defendant N. W. Realite Limited is its agents. The plaintiff herein Springboard Production Limited are tenants in the suit premises for four years. The parties have a six year lease (which lease was not shown to this court).
2. The status of the parties therefore is that the Plaintiffs are in business premises that are uncontrolled. Their remedy lies with the High Court where disputes may arise and not the Business Premises Rent Tribunal.
3. In brief, the plaintiff files an application under certificate of urgency dated 25<sup>th</sup> June 2007 stating that this court do issue a mandatory injunction restraining the defendants from locking their business premises in “ a bid to unlawfully” evict them. That the lease between the parties is still in existence. The affidavit of the applicant was deponed to one Gachoka Kingori who stated that on 18<sup>th</sup> June 2007 the 2<sup>nd</sup> defendant (agents) came and locked up their business without notice and in total disregard to their interest. The action was unlawful. They had tools of trade in the offices; this meant they were unable to do their business. It further has caused them income loss.

**II Application 25<sup>th</sup> June 2007**

4. The applicant/plaintiff now prays that this court issues a mandatory injunction to order the defendants remove the locks from the doors of their business premises.

**III In reply**

5. The defendants filed their reply out of time. Under Order L r16 Civil Procedure Rules the reply is to

be filed within three days before the hearing date. I have ruled elsewhere that if a reply is envisaged to be filed out of time a separate application under Order L r 1 civil procedure rules with an affidavit attached is to be made giving the reason for the delay in filing such an affidavit. This is not done orally from the bar as the civil procedure rules do not provide for it.

6. The replying affidavit was duly rejected.

#### IV Findings

7. Should this court grant an injunction? The application state the doors being so locked was unlawful and without notice. There was nothing to show to this court the unlawfulness of such action by the landlord.

8. Under the Distress of Rent Act where the suit business premises is uncontrolled a landlord may lock up a house in what is termed as distress – to compel the payments of rents due – no notice is specifically required and if required there is no unlawfulness of this matter. I would note in this case that the plaintiff required to state that they accrued no rent. This is an omission.

9. What landlord or unlawful actions was therefore required by the landlord to do must be specified. I find that the wording of this application is placed in such a way that does not disclose all the facts before the court. The prayer sought is one of mandatory injunction. This is not available in Kenya unless for very clear circumstances.

10. I decline to issue the mandatory injunction prayed for and dismiss the application of 25<sup>th</sup> June 2007 with costs.

Dated this 5<sup>th</sup> day of July 2007 at Nairobi.

**M. A. ANG'AWA**

**J U D G E**

Waiganjo & Co. Advocates for the plaintiff

The Church Commissioners – 1<sup>st</sup> defendant

N.W. Realite Limited - 2<sup>nd</sup> defendant