



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

Civil Case 152 of 2007

1. Land and Environmental Law Division
2. Subject of main suit: Landlord/Tenant
3. Application 6 June 2007 injunction
 - i) To restrain 1st defendant from levying distress till determination of application (Visram J 6 June 2007)
 - ii) The determination of suit (hearing Ang'awa J)
 - ii) Defendant delays in reply.
4. Reasons for injunction application
 - i) Plaintiff levy's distress
 - ii) Breach of agreement
5. Held: Injunction to issue
 - i) Plaintiffs demonstrated irreparable loss that may occur.
 - ii) Lease agreement displayed
6. Advocate:-

S.O. Ojienda for Ojienda & Co. Advocates for the plaintiff

W.W.Wanyama for Wanyama & Co. Advocates for the defendant

Front bench auctioneers – 2nd defendant in person absent

FOCUS MOTORCYCLE MANUFACTURING COMPANY LTD.....PLAINTIFF

VERSUS

ANNE MUMBI HINGA1ST DEFENDANT

FRONT BENCH AUCTIONEERS2ND DEFENDANT

RULING

1 Background of application of

6 June 2007 for an injunction

1. The relationship between plaintiff and the defendant No.1 is that of tenant/landlady respectively. The defendant No.2 is an auctioneer.

2. On the 12 January 2007, the parties purported to enter into a lease agreement whereby the 1st defendant was to lease out her premises erected on LR No.37/167 along Witu road, Industrial area with effect from 20 January 2007.

3. The alleged terms of the lease was that monthly rent of Ksh.185,000/- would be paid. This lease was subject to an alleged agreement that on 24 April 2007 certain repairs were to be carried out as outlined in the plaint. The defendant No.1 failed to carry out the said agreement repairs and consequently the plaintiff alleged that she was in breach of the contract.

4. In response the defendant No.1 proclaimed the plaintiff's property or rent arrears. In so doing she failed to issue the required notice of three months under the Transfer of Property Act of 1882 Laws of Kenya. Despite this, the defendant No. 1 held three months deposit to have covered the rents due.

5. The injunction prayed for by the plaintiff is to restrain defendant No.1 and her auctioneer from levying distress for rent. Ex parte orders were granted by Visram J.

6. The defendant No.1 entered appearance by appointing an advocate. The said advocate was given time to make reply to the application but failed to do so within the time given.

7. The hearing proceeded three weeks after the matter had first been to court.

II: Findings

8. In this application the plaintiff have demonstrated that they have a prima facie case whereby the likelihood of being distressed for rent had been made. They have shown to this court their lease agreement and how they had paid the sum deposit required in full and monthly rent payments. What therefore is in dispute comes about the repair works to the premises that the landlady was to make good but as -alleged that this had not done and therefore in breach of the lease agreement.

9. The likelihood of loss to the plaintiff and their business has been demonstrated herein.

10 I grant the application for an injunction till the determination of this suit.

11. There will be costs to the plaintiff to be paid by the defendant in this application.

Dated this 9th day of July 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

S.O. Ojienda for Ojienda & Co. Advocates for the plaintiff

W.W. Wanyama for Wanyama & Co. Advocates for the defendant

Front bench Auctioneers - 2nd defendant in person - absent