

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

Civil Appeal 438 of 2006

MARGARET MURPHYAPPELLANT

V E R S U S

1. GODFREY NGURE MBURU (T/A HAKI TRADERS)

2. QUINMA LTDRESPONDENTS

R U L I N G

The Appellant herein was a tenant in the residential premises managed by the 2nd Respondent. The 2nd Respondent (through the 1st Respondent, an auctioneer) levied distress against the Appellant for arrears of rent amounting to KShs. 142,000/00. In the process the Appellant's household goods were attached, and she was locked out. She filed suit in the lower court seeking the reliefs of permanent injunction to prevent sale of those goods and for an order for the premises to be opened. With the plaint she also filed an application for temporary orders pending disposal of the suit.

On 22nd June, 2006 the lower court refused the application upon the grounds that the Appellant did not demonstrate a *prima facie* case with a probability of success; it also found that the Appellant could be adequately compensated by damages in the event that she succeeded in her suit. This appeal is against that ruling of the lower court.

Together with the memorandum of appeal the Appellant filed an application by notice of motion dated 30th June, 2006 under Order 41, rule 4 of the Civil Procedure Rules (the Rules) seeking the main order of prohibitory injunction to restrain the Respondents from selling the Appellant's attached goods pending disposal of the appeal.

I have read the supporting and replying affidavits. I have also considered the submissions of the learned counsels appearing. No authorities were cited. I have, further, perused the application before the lower court and the ruling thereon. No new material has been placed before this court by the Appellant. She placed before the lower court no evidence of payment of rent to back up her contention that she had paid all rents due. On the other hand, the 2nd Respondent placed before the lower court evidence of all the demands for arrears of rent made. The lower court did not believe the Appellant's allegation that evidence of her payment of the arrears of rent had been left in the premises when the Respondents locked them up.

Just as in the lower court, the Appellant has not placed before this court any evidence of payment of the arrears of rent demanded by the 2nd Respondent. Looking at all the material placed before the court, it is unlikely that the Appellant had paid the arrears of rent. I am thus not satisfied that the Appellant's appeal has any reasonable chances of success. Besides, given the nature of the Appellant's claim in the lower court, I am satisfied that an award of damages will adequately compensate the Appellant should she succeed in her appeal and eventually in her suit.

In the result, I find no merit in the present application. It is hereby dismissed with costs to the Respondents. Orders accordingly.

DATED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2007.

H. P. G. WAWERU

J U D G E

DELIVERED THIS 9TH DAY OF NOVEMBER, 2007