



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL SUIT NO. 112 OF 2005

LUSAKA ROAD AUTO GARAGE LIMITEDPLAINTIFF

VERSUS

KHADIJA ABDULKARIM PASTA & OTHERSDEFENDANTS

R U L I N G

Chamber Summons dated 3/6/05 seeks orders to restrain Respondents from entering the premises known MBS/BlockXLVI)45 B to remove any goods therein.

The claim as drawn in the plaint seeks to restrain by injunction the defendants from levying distress for Rent on the ground that Defendants/Respondents entered into an agreement whereby the Plaintiff/Applicant was to carry out repairs to a landlord premises to enable the Applicant to obtain a trading license and deduct expense from rents.

The Applicant carried out all the needed renovations repairs and obtained necessary consent at a total cost of Shs.1,180,000/-. The application is opposed. There is non-disclosure of previous application in RMCC 3230/2004 which was dismissed with costs.

Khadija Abdulkarim Pasta is only one defendant "Others" must be disclosed. No proof of agreement to offset rents with costs of repairs and no proof of costs is exhibited. Signed agreements demands payment quarterly without deductions.

I have perused the material laid before the court. I am satisfied that the defendant Khadija Abdulkarim Pasta is the proper defendant being one of the administrators of deceased landlord.

However, I have noted the plea of the Applicant that distress would affect the interest of his customers and this could very well drive him out of business which is not the intention of the parties when they entered into an agreement of lease.

However, it cannot be said that on matters of landlord and tenant the landlord has powers to distraint for rent whenever there is arrears outstanding. The remedy of illegal distress is by Act (Distrain for Rent Act Cap.293) specified to be in damages. The Defendant says that it is possible to pay off the Applicant whatever damages, as there are sufficient assets to pay.

However subject to prove the expenditure incurred by the tenant in the circumstances should be taken into account. This court has noted that the applicant is guilty of non-disclosure. That he had filed for injunction in lower court, which was dismissed. This act disentitles the applicant to any equitable remedy.

Nevertheless in the circumstances of this case the Respondent has suggested a remedy which I found fair in the circumstances. I allow the application on condition that the Applicant shall deposit in a joint account in a reputable bank in the names of the two advocates for the parties Shs.1,260,000/- and shall commence the payment rents into that account monthly the Current Rent payable by him.

The deposit shall be made with the next 30 days. Failing which the landlord shall be entitled to levy distress. Costs of application to Respondent.

Delivered and dated at Mombasa this 18th day of January 2006.

J. KHAMINWA

J U D G E

18/1/06

Khaminwa, J

Kazungu – clerk

Ms. Kasmani

No appearance for other party though served.

Ruling read out in court.

KHAMINWA, J