



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 554 OF 2005**

**LOISE LIMITED.....PLAINTIFF**

**-VERSUS-**

**MICHAEL LINCK T/A**

**THE LINCKS TO BETTER HEALTH.....DEFENDANT**

**RULING**

**I. ORIGINAL LEASE, THEN PERIODIC TENANCY — IS TENANT STILL PROTECTED? — THE TWO APPLICATIONS, THE PRAYERS, THE DEPOSITIONS**

Counsel on both sides reached a consent, on 17<sup>th</sup> October, 2005 that two separate applications be heard together. These are: the defendant's Chamber Summons of 7<sup>th</sup> October, 2005; and the plaintiff's Notice of Motion of 12<sup>th</sup> October, 2005.

The defendant's application was brought under Order XXXIX, rules 1 and 2 of the Civil Procedure Rules and s.3A of the Civil Procedure Act (Cap. 21). Its prayers were in substance as follows:

*(a) that, the plaintiff by itself, its agents, servants and/or employees be made forthwith to reconnect the defendant's water supply, water control pump box and water pipes on the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of the suit;*

*(b) that, the plaintiff by itself, its agents, servants and/or employees be restrained from disconnecting the defendant's electricity supply on the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of this suit;*

*(c) that, the plaintiff by itself, its agents, servants and/or employees restore the defendant's fence on the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of this suit;*

*(d) that, the plaintiff by itself, its agents, servants and/or employees be restrained from conducting construction works and trespassing onto the suit premises and in any manner that interferes with the defendant's quiet possession and enjoyment of the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of this suit;*

*(e) that, the enforcement of the orders be supervised by the Officer Commanding the Station, Kilimani Police Station.*

The plaintiff's Notice of Motion is brought under Orders XLIV (rules 1, 2, 3 and 4), XXXIX (rules 1, 2, and 3) and L (rule 2) of the Civil Procedure Rules, and s.95 of the Civil Procedure Act (Cap.21).

The purpose of this application is to seek prayers that the Court do stay, review, vacate and/or set aside its orders given *ex parte* in favour of the defendant on 7<sup>th</sup> October, 2005. Those orders were as follows:

**(i) that, the plaintiff by its agents, servants and/or employees forthwith reconnect the defendant's water supply, water control pump box and water pipes on the premises known as L.R. No. 2/144 Kirichwa Road, Nairobi pending hearing *inter partes*;**

**(ii) that, the plaintiff by itself, its agents, servants and/or employees be and is hereby restrained from disconnecting the defendant's electricity supply on the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending hearing *inter partes*;**

**(iii) that, the plaintiff by itself, its agents, servants and/or employees restore the defendant's fence on the premises known as L.R. No. 2/144 Kirichwa Road, Nairobi pending hearing *inter partes*;**

**(iv) that, the plaintiff by itself, its agents, servants and/or employees be and is hereby restrained from conducting construction works or trespassing onto the suit premises or in any manner interfering with the defendant's quiet possession and enjoyment of the premises known as L.R. No. 2/144 Kirichwa Road, Nairobi pending hearing *inter partes*;**

**(v) that, the enforcement of these orders be supervised by the OCS, at the Kilimani Police Station;**

**(vi) that, the application be listed for *inter partes* hearing on 25<sup>th</sup> October, 2005.**

Why does the plaintiff seek the setting aside of the foregoing interlocutory orders? It is claimed that the orders had been served as two separate orders, on 7<sup>th</sup> October, 2005 and on 11<sup>th</sup> October, 2005 — and this is cause for objections. It is stated that the Court's orders aforesaid have been overtaken by events. It is claimed that the Court orders of 7<sup>th</sup> October, 2005 are not in the Court file — but I find that they are, indeed, on file, issued and stamped by the Deputy Registrar. It is averred that the “Court orders granted on 7<sup>th</sup> October, 2005 and 11<sup>th</sup> October, 2005 were obtained by misrepresentation and failure...to disclose material facts.” It is stated too that “the Court orders granted on 7<sup>th</sup> October, 2005 and 11<sup>th</sup> October, 2005 *created a lease* and in actual fact the Court proceeded to give final orders.” It is asserted that “the orders given are *not capable of being enforced*.” It is asserted that “the Court proceeded to adjudicate on a Chamber Summons application dated 10<sup>th</sup> May, 2005 which was not material to the applicant's application dated 7<sup>th</sup> October, 2005.” It is contended that “the Court order dated 11<sup>th</sup> October, 2005 should not have been issued as the defendant had failed to comply with the Court order granted on 7<sup>th</sup> October, 2005 for service within three days and there were no material facts placed before the Court to grant another order.” It is stated that “the orders were not obtained in good faith and the applicant's application is tainted with malice.” It is asserted that “the respondent herein does not deserve the equitable remedy of injunction, interim, mandatory or permanent.” It is contended that “the defendant has not established any *prima-facie* case/counterclaim against the plaintiff.” It is contended that “the orders granted herein introduce new issues/matters which are not in the pleadings/counterclaim/defence or plaint.” It is stated that “the respondent did not pray for an interim injunction to get the orders sought on 7<sup>th</sup> October, 2005.”

The defendant's Chamber Summons of 7<sup>th</sup> October, 2005 is accompanied by the supporting affidavit of **Dr. Michael Linck** sworn on even date. He avers that he operates a medical clinic at the suit premises, where he also resides with his family. He deposes that the suit premises were leased to him in 1996 by **Dr. G.J. Momanyi** who has turned out to be a director and shareholder of the plaintiff company. As at 1996 the lease granted to the deponent was for one year; but at the end of that period, he continued to be a

tenant and remained a tenant to-date, with the plaintiff's consent. The deponent believes to be true the advice tendered by his advocates, that by operation of law, he had become a statutorily-protected tenant under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301). During the period of tenancy the deponent has, *with the plaintiff's consent*, developed the suit premises by constructing a fence and setting up a garden with exotic flowers and plants; and again with the plaintiff's permission, the deponent has constructed a borehole — the cost of which, it was agreed, was to be set off against accrued rents.

The deponent avers that he has also extended certain credit facilities to the plaintiff — who in effect is **Dr. G. J. Momanyi** and his wife — all of which were to be set off against accrued rent; and the defendant is currently owed a total of Kshs.3,632,709/50 — amounting to an advance rent payment covering the period running up to 31<sup>st</sup> June, 2009.

The deponent avers that sometime between January and March, 2005 while he was outside the country, the plaintiff/**Dr. G.J. Momanyi** deposited a letter at his premises purporting to give him *notice to vacate* the suit premises by 1<sup>st</sup> May, 2005; and thereafter the plaintiff demolished the fence of the suit premises, destroyed the defendant's exotic plants, flowers and other valuables and entered upon the task of destruction at the suit premises. To-date the plaintiff is continuing with disruptions to the tranquility of the suit premises, the same effected through construction works which have caused the deponent nuisance and discomfort especially to his "sickly patients." It is deponed that *the plaintiff subsequently filed the suit* herein for possession of the suit premises, to which suit the defendant filed a defence and counterclaim.

The deponent avers that on 28<sup>th</sup> September, 2005 a director of the plaintiff company, **Mrs. Momanyi**, "forcefully moved into the suit premises with her workers and therefrom removed the water pump, electrical control box, in effect disconnecting [the] water supply from the borehole. They then proceeded to remove all water pipe connections to [the] premises." And on 29<sup>th</sup> September, 2005 the plaintiff "demolished the remaining fence dividing [the defendant's] house from the construction site." This act, the deponent avers, "has left my house exposed and poses a serious security and health risk." On 1<sup>st</sup> October, 2005 an employee of the plaintiff informed the deponent that the plaintiff had directed that the electricity flow to the suit premises be disconnected.

The deponent avers that the plaintiff after filing suit, has exhibited contempt of the law and of the Court, by *not waiting* for the dispute to be determined before disrupting the current tenancy. He prays that unless the orders sought herein are granted, his patients and family will suffer great inconvenience and discomfort.

Annexed to the plaintiff's Notice of Motion of 12<sup>th</sup> October, 2005 is **Dr. Gerald Joel Momanyi's** supporting affidavit of even date. He avers that he is a director of the plaintiff company, and that he and his wife had entered a *lease agreement* with the defendant on 1<sup>st</sup> March, 1995. He avers that "it was a condition in the said agreement that structural work would commence within a short period and that the landlord would be allowed into the premises to carry out the said structural work." He annexes the relevant "memorandum of lease," which, so far as is material, thus reads:

"The memorandum of lease is made the 9<sup>th</sup> day of January, 1996 between **Dr. G.J. Momanyi** of P.O. Box 53648 Nairobi hereafter referred to as the landlord on the one part and THE LINCKS TO BETTER HEALTH of P.O. Box 24444 Nairobi hereafter referred to as the Tenant.

"It is hereby agreed as follows: —

1. The said landlord hereby agrees to lease to the said Tenant all buildings comprising a main house, guest house and servants quarters and half the grounds identified as L.R. Number 2/144 for a term of ONE YEAR with option to renew the lease beginning from 1<sup>st</sup> March, 1996 at an agreed rent of Kenya Shillings Seventy Thousand...per month.

.....

5. The Tenant shall permit the landlord or his workmen at all reasonable times to enter upon the premises and examine its condition and carry out structural work, and repairs or decorations necessary on the premises.”

The deponent avers that “there was an option to renew [the] lease and indeed the rent was revised to Kshs.90,000/=...” He further avers that “it was agreed between the parties that the rent be reduced to Kshs.70,000/= on condition that the defendant should build a borehole without payment of any rent and the rent will go towards the expense incurred in the said construction.” He avers that “the amount spent on the borehole had been recovered by May 2005 but before May 2005 the plaintiff had given the defendant notice to vacate the premises enclosed in their letter dated 24<sup>th</sup> January, 2005...”

The deponent averred that his works at the suit premises had been in progress even before the suit herein was filed. He further depones: “...the disconnection [to utility services] was done *by the authorities concerned for security reasons...*” He again depones: “it is not possible to reconnect electricity as the *Kenya Power and Lighting [Company Ltd] staff are the only ones allowed to disconnect and reconnect power.* The same had already been disconnected before 7<sup>th</sup> October, 2005.” He further depones: “this also applies to water, and that it *can only be done by Nairobi Water Company.*”

The deponent denies that “the perimeter wall has been demolished.” He claims too that “the *Court order is incapable of being obeyed.*” He claims too that “*the defendant is illegally in the premises having been given notice to vacate as early as January...*”

The deponent deposes: “the issue of [the] borehole had been set off and at the *borehole belongs to the plaintiff and this Court cannot order the plaintiff to offer water to the defendant for free.*” He claims further: “*the orders given herein are not capable of being enforced.*” He goes on to allege in his depositions: “*I am also informed by my advocates on record that the Courts erroneously adjudicated on the Chamber Summons application without listening to our side of the story.*”

**Dr. Michael Linck** the defendant swore a further affidavit on 14<sup>th</sup> October, 2005 the material elements of which are as follows:

“2. That on 7/10/2005 I filed my application [of even date] under certificate of urgency because the plaintiff had subjected me to acts of thuggery and harassment causing my patients, my family and myself extreme inconvenience, pain and suffering...”

“4. That on 8/10/2005 a process server of this Honourable Court in my presence served the said orders upon one of the directors of the plaintiff namely **Dr. Gerald Joel Momanyi** in the presence of the other director, **Mrs. F.A. Momanyi** who is his wife.

“5. That owing to an omission in the said order, on 11/10/2005 a process server of this Honourable Court once again in my presence served **Dr. Gerald Joel Momanyi** with the second extracted order herein together with a penal notice. The service was once again effected in the presence of **Mrs. F.A. Momanyi** his wife.

“6. That in ...breach of the said orders, the plaintiff and its directors namely **Gerald Joel Momanyi** and **Mrs. F.A. Momanyi** have never complied with all or any of the said orders to the extent that:

—

(a) to-date electricity supply to the suit premises has never been reconnected;

(b) to-date the water supply to the suit premises has never been reconnected;

(c) to-date the destroyed fence to the suit premises has never been restored;

(d) the plaintiff's agents, servants and/or employees are constantly entering and continuing with noisy construction works at the suit premises with intent to annoy."

The deponent avers, further, that on 10<sup>th</sup> October, 2005 "some agents, servants and/or employees of the plaintiff entered the suit premises without his knowledge and, using a sharp object, deliberately poked into [his] 10,000-litre water-storage tank; and consequently all the stored water flowed out..."

## II. RIGHTS OF TENANT, RIGHTS OF LANDLORD: THE SUBMISSIONS

To prosecute the *two applications*, and on the basis of the claims and the evidence which I have set out, learned counsel **Ms. Njagi** and **Mr. Onyancha** for the plaintiff, and learned counsel **Mr. Nzamba Kitonga** for the defendant appeared before me on 25<sup>th</sup> October, 2005.

**Mr. Kitonga** noted from the evidence that **Dr. Linck** had always been in possession, as a tenant, of the suit property, and to-date he remains in occupation. Since 1996 the lease had not been renewed formally, but the *parties had confirmed the tenancy relationship*. This, learned counsel submitted, converted the defendant into a *statutory tenant*, within the terms of the **Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301)**; in which event termination of the tenancy could not be effected by the landlord except by following the *procedures* laid down under that Act. Notice would have to be given by the landlord *in prescribed form*; and if the tenant did not respond, or refused to vacate, then the landlord's lawful recourse was to file *Tribunal proceedings* under the said Act. This procedure, **Mr. Kitonga** submitted, was not followed; the landlord had merely written a letter to the defendant calling upon the defendant to vacate — which notice the *defendant resisted*. What did the plaintiff then do? The plaintiff *filed suit for possession*; and within the ambit of that suit, the plaintiff *filed an application for mandatory injunction against the defendant*. The said application, however, was *not further prosecuted*; it was *stood over generally*. At that stage, what were the *rights of the plaintiff*? And what was the *status of the proceedings*? Had the *defendant*, in those circumstances, no rights at all?

Without asking the foregoing questions, learned counsel submitted, the plaintiff resorted to a *new platform of action*; and the same was clearly in violation of the law, and in infringement of the defendant's rights. This new platform is described in the evidence of the defendant which is *not controverted*; and learned counsel **Mr. Kitonga** thus portrayed it:

*"But the plaintiff now started acts of harassment and thuggery: removing borehole control box from the defendant's premises; removing all the water installations; disconnecting electricity; creating intensified noise at the plaintiff's construction works on the suit premises; destroying the fence providing security for the suit premises..."*

**Mr. Kitonga** submitted that the *plaintiff* had not, in its evidence, *denied that it failed to comply with Court orders* duly issued in favour of the defendant. He urged that judicial notice be taken that the plaintiff had *admitted* being in contempt of Court orders; and he urged that a party in contempt be not accorded a hearing by the Court. In these circumstances, counsel submitted, the defendant was entitled to the orders sought; especially as the defendant stood to suffer irreparable damage not capable of being compensated by an award of damages.

Counsel disputed the claims made for the plaintiff — that it was not the plaintiff but Kenya Power and Lighting Co. Ltd and Nairobi Water and Sewerage Company who respectively had disconnected the defendant's electric power and water (respectively). Neither of the two bodies, counsel urged — quite convincingly, I would hold — can disconnect service *without instructions*, in circumstances such as those prevailing in the instant matter. Moreover, the defendant's water supply had been the *borehole*, which had been constructed with the approval of the plaintiff. **Mr. Kitonga** also noted that the plaintiff had kept silent on one of the grievances in respect of which interim relief was being sought, namely, that the

*security fence* surrounding the suit premises had been destroyed.

**Ms. Njagi** for the plaintiff in her submission was endeavoring to state factual matters which ought to have appeared in the depositions but did not: that the whole parcel of land affected was a relatively large one, with many buildings which happened to include the part where the defendant resided and operated. In the first place counsel is not a *witness*; and secondly, a different impression could have been obtained from the defendant's evidence which was uncontroverted.

Learned counsel went on to raise a point which, with respect, ill-suits this interlocutory stage in the proceedings: "The agreement between the parties was not about business, it was about residence; residence for **Dr. Linck**, and another residence for **Dr. and Mrs. Momanyi**." This controversial point cannot, with respect, be entertained here; for **Dr. Momanyi** in his affidavit has averred that his residence is located elsewhere in Nairobi. Counsel's contention on those remarkable lines was in aid of the claims that (in the words of counsel): "There has been a coexistence; there has been no interruption in terms of [an] eviction [of the defendant]."

**Ms. Njagi** maintained that the interim restraint orders which had been issued in this matter, in favour of the defendant, were *improperly obtained* — because the defendant had not disclosed that he had received the plaintiff's notice of 24<sup>th</sup> January, 2005, to vacate the suit premises. This point, however, fails to address the essential legal point raised by **Mr. Kitonga**, that the defendant was a *protected tenant*, and so he could not be summarily excluded from the suit premises, and that the plaintiff ought to have referred the matter to the tribunal under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301).

The foregoing legal point, in my opinion, takes away the thrust of all the *main contentions* advanced by counsel for the plaintiff: that the plaintiff's impugned works at the suit premises was acknowledged already as a legitimate project; that rent issues outstanding had already been resolved through borehole-related set-offs; that the defendant had already agreed to purchase units out of the ongoing construction project; that the plaintiff's acts of destruction through the construction works had already been agreed to by the defendant; that the defendant had already acknowledged the plaintiff's notice-to-quit.

At the further hearing which took place on 23<sup>rd</sup> March, 2006 **Mr. Kitonga** still represented the defendant, while **Mr. Ongoya** now represented the plaintiff in place of **Ms. Njagi**; and **Mr. Ongoya** began by adopting earlier submissions by **Ms. Njagi**.

**Mr. Ongoya** submitted that the defendant ought not to have been granted the orders of 7<sup>th</sup> October, 2005. And why? Because: "All are seeking interlocutory injunction pending hearing and determination of the suit; and these are orders obtainable after *inter partes* hearing." Such a contention, I think, would be legitimate only if reference was being made to the *inter partes* hearing of the *main suit*. In this particular case the *ex parte* orders were made only in respect of *inter partes* hearing of the *application*; and so there is no valid challenge to the orders of 7<sup>th</sup> October, 2005 being made — with respect. It follows that the basis for the plaintiff's claim, that "Since the Court granted orders that the defendant had not sought, this is a basis for discharging the orders," is flawed and cannot, with respect, be entertained by the Court.

Learned counsel **Mr. Ongoya** made submissions on the nature of the defendant's tenancy. He stated: "**Mr. Kitonga** admitted that the tenancy relationship at some point in time became a protected tenancy." From that position it can be stated that it *is* common cause that at a certain point in time, the defendant *was* indeed a protected tenant. So, when and how, would the defendant have *lost* that status? It is a relevant question for, if the defendant never lost that status, then the Court would have to regard him as a *statutory tenant*; and if he is, then the plaintiff would have no basis for evicting him, save by recourse to the procedures established under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap.301).

**Mr. Ongoya** submitted that the defendant had no protection under the said statute, even though he was running a *clinic*, which ought to be regarded as a *shop*. This argument was, however, inconclusively pursued; in particular counsel never addressed the evidentiary material before the Court, that the suit

premises was also the *home* of the defendant with his wife and young child. Since upon he who contends rests the duty to prove, I cannot at this stage, take it in favour of the plaintiff that the defendant was a statutory tenant *then ceased* to be such. I am therefore unable to accept the plaintiff's position which is thus expressed: "Effectively...the tenancy in question is outside the scope of [the] meaning of controlled tenancy under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301). Therefore the termination notice issued to the defendant by the plaintiff was effective and the defendant's continued stay on the subject land constituted trespass."

Learned counsel **Mr. Kitonga**, in his reply, submitted that the plaintiff had been in contempt of Court orders, and so should not have been heard at all. He noted the fact that the plaintiff had admitted that the defendant *was* in possession of the suit premises, "with clinic and residence"; and that the plaintiff had admitted having filed suit seeking possession of the suit premises. On the basis of these facts, counsel urged: "This is the plaintiff's suit; and the plaintiff having filed suit, should not have taken the law into their hands by attempting to use extra-legal means to evict, harass and oppress the defendant." Counsel urged that the tenor of the plaintiff's evidence and submissions in the instant applications came down to this: "On the facts...the plaintiff, far from disputing the defendant's complaints, has actually admitted them, and has all along been in contempt."

Learned counsel urged that the defendant had met the test for grant of interlocutory injunctions as laid down in the well known Court of Appeal decision in **Giella v. Cassman Brown** [1973] E.A. 358. The suit premises, it was submitted, is used as both residence and private clinic; the private-clinic aspect was a business, and so was properly covered by the terms of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301). Counsel urged: "*There is a tenancy between the parties which may or may not have expired; the defendant is on the suit premises; those facts by themselves are sufficient to persuade the Court to grant an injunction. Whose version of the account is true, is a matter for investigation at the hearing of the suit.*"

### III. FINAL ANALYSIS AND ORDERS

The plaintiff has a main suit pending. Suits are, and ought to be, filed only out of *necessity* — when parties have conflicting claims which they are by themselves unable to resolve. Where a dispute is brought before the Court — as the instant one has been — no party may *on its own* take any action affecting the other party, in respect of the matter which is in dispute; for the whole question is then squarely placed under the *authority of the Court*, and in this way committed to the Court's sense of justice.

If, therefore, I find it to be the case at this interlocutory stage, that the plaintiff is disturbing the defendant's enjoyment of the suit premises, in respect of which the *plaintiff* itself has filed suit, then I will have to grant the defendant's prayers. Indeed it should be considered that a plaintiff who during the pendency of his own suit, takes it upon himself to disturb the defendant's peace, gives valid ground for the grant of interlocutory equitable relief.

The defendant has argued the point — and this is not successfully contested, in my view, — that he is a protected tenant under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301). It therefore follows that if the plaintiff has not complied with the terms of that Act — and the plaintiff has not complied, as I find — then it has no basis for interrupting the defendant's quiet enjoyment of the suit premises, at this stage.

There is credible evidence before me that the plaintiff has taken invasive, oppressive, high-handed and impermissible actions to force the defendant out of possession of the suit premises: destruction of the protective fence; procuring disconnection of life-supporting utility services; unlawful destruction of the defendant's private essential-utility safety arrangements; creation of sustained noise pollution; acts perilously bordering on stark thuggery.

In the meantime, lawful orders of this Court have been made and served, restraining the plaintiff's acts calculated to injure the defendant and force him out of the suit premises. But these orders have been

disobeyed by the plaintiff, who indeed has the audacity to seek to paint its contumelious acts in positive colour, and to urge such censurable cause even in Court.

It is necessary for me to caution that the plaintiff, like any other person, is subject to law; and a proper application could lead to sanctions as ordained by law.

**The appropriate orders in these interlocutory proceedings, in my judgement, are as follows:**

**1. With regard to the defendant's application by Chamber Summons dated 7<sup>th</sup> October, 2005 —**

*(a) that, the plaintiff by itself, its agents, servants and/or employees shall forthwith (and in any case within five days of the date hereof) secure the reconnection of the defendant's water supply, water control pump box and water pipes on the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of the plaintiff's suit; and if the electric power supply has already been disconnected, the plaintiff shall secure its re-connection forthwith, and in any event, within three days of the date hereof;*

*(b) that, the plaintiff by itself, its agents, servants and/or employees shall be restrained from disconnecting the defendant's electricity supply on the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of the plaintiff's suit;*

*(c) that, the plaintiff by itself, its agents, servants and/or employees shall restore the defendant's fence on the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of the plaintiff's suit;*

*(d) that, the plaintiff by itself, its agents, servants and/or employees shall be and are hereby restrained from conducting construction works and trespassing onto the suit premises and/or in any manner that interferes with the defendant's quiet possession and enjoyment of the premises known as L.R. No. 2/144, Kirichwa Road, Nairobi pending the hearing and determination of the plaintiff's suit;*

*(e) that, the enforcement of the orders made herein shall be supervised by the Officer Commanding the Station at the Kilimani Police Station.*

*(f) that, the plaintiff shall bear the defendant's costs in this application.*

**2. With regard to the plaintiff's application by Notice of Motion dated 12<sup>th</sup> October, 2005 —**

*(a) that, the prayer that "this Honorable Court do stay, review, vacate and/or set aside its orders given on 7<sup>th</sup> October, 2005" is refused;*

*(b) that, this application is dismissed with costs to the defendant.*

**3. All proceedings currently in progress, or such as may hereafter be filed, shall be heard and determined on the basis of priority within the Civil Division of the High Court.**

**Orders accordingly.**

**DATED and DELIVERED at Nairobi this 5<sup>th</sup> day of May, 2006.**

**J. B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Mwangi**

**For the Plaintiff: Ms. Njagi, Mr. Ongoya, instructed by M/s. Njagi Nyaboke & Co. Advocates**

**For the Defendant: Mr. Kitonga, instructed by M/s. Nzamba Kitonga Advocates**