



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)  
Civil Case 116 of 2006**

**FUN FASHIONS LIMITED .....PLAINTIFF**

**VERSUS**

**SOIN DEVELOPMENT LIMITED .....DEFENDANT**

**RULING ON A PRELIMINARY POINT**

By a plaint filed in court on 8/2/2006, the plaintiff Fun Fashions Limited sued Soin Development Ltd. seeking a permanent injunction to ***“restrain the defendant by its servants and or agents from leasing out or dealing with suit premises in any manner that is inconsistent with the plaintiff’s tenancy in shop No.3 on Soin arcade or in anyway whatsoever interfering with the plaintiff’s tenancy, pending the hearing and determination of Business Premises Rent Tribunal Case No.359 of 2004”***.

The plaintiff also sought a permanent injunction to restrain the defendant his servants and or agents from selling and or otherwise dealing with the goods seized from the plaintiff’s premises.

Filed on the same day as the plaint was a chamber summons application seeking an order to restrain the defendant from selling the goods, ***“forcefully seized from the plaintiff’s business premises---”***

The plaintiff further prayed the court, ***“to compel the defendant to deliver up and restore to the plaintiff, “the goods forcefully seized from the plaintiff’s business----” pending the hearing and determination of the case filed in the Tribunal.”***

The plaintiff further wanted the court to **“restrain the defendant from leasing out the suit premises in a manner inconsistent with the plaintiff’s tenancy.”**

A Director of the plaintiff’s company swore the supporting affidavit, which was, however, not dated but was filed in court on 8<sup>th</sup> February 2006.

The replying affidavit was sworn by Andrew Njuru on 16<sup>th</sup> February, 2006, and filed in court the same day.

The affidavit describes the plaintiff as a ***“stranger”*** in Soin Arcade Centre and is not a tenant as such, and no goods belonging to it were in the suit premises.

Andrew denied that the defendant broke into the suit premises and forcefully removed goods as alleged.

When the application was brought before me for hearing, Mr. Kiage for the plaintiff said the suit premises is currently empty, after the defendants agents had removed the plaintiff goods and this ended in

the plaintiff filing a reference in the Business Rent Tribunal. But Mr. Maweu for the defendant submitted that his client has been dealing with one Latifer A. Shaikh and not the plaintiff referred to as Fun Fushions Ltd.

The advocate submitted that there was a legal point as to who the plaintiff really is. The two consented to file written submissions for the determination of this point.

Counsel for the defendant submitted that the plaintiff in this suit is not the same plaintiff in the suit filed in the Tribunal which was filed by Latifa A. Sheikh t/a as Fun Fashion Boutique.

The advocate submitted further that the plaintiff's application for injunction based on the fact that there is a case pending before the Business Rent Tribunal should be dismissed because the 2 cases have two different plaintiffs. That Mrs. Latifa A. Shaikh who filed the suit in the Tribunal has not sworn an affidavit in this suit, neither has she alluded to any relationship between her and the plaintiff in this suit.

The defendant counsel found no nexus between the documents attached to the supporting affidavit, and the plaintiff in this suit.

I scrutinized the affidavit in support of the plaintiff's application plus its annexures. It was sworn by a Director of the plaintiff company, one Shaikh Aslam Abdul Karim, who does not refer to Mrs. Latifa A. Shaikh at all, yet she is the one who filed the reference in the Tribunal as a tenant of shop No.3 Soin Arcade.

So going by the pleadings on the file so far, and the submissions on record, I am in agreement with counsel for the defendant that the plaintiffs in the two suits, ie this one and the reference are **different legal entities**, so the plaintiff in this suit cannot rely on, and or seek an injunction basing it in the Reference filed in the Tribunal.

I therefore proceed to strike out prayers 3 and 4 in the chamber summons application dated 8/2/2006, filed in court the same day.

The plaintiff is at liberty to take a date for the hearing of prayer 1 in the same application.

Dated at Nairobi this 30<sup>th</sup> day of June, 2006.

**JOYCE ALUOCH**

**JUDGE**