



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

Civil Case 280 of 2006

**WACHIRA MURITHI KIBUCHI T/A UPDATE SALOON.....
PLAINTIFF**

VERSUS

JADSON MARANGA NYAGAU

**LEO MATINDE T/A INSIGHT AUCTIONEERS.....
.....PLAINTIFF**

RULING

This Ruling is delivered in the Chambers Summons dated 23rd March 2006 in which the Plaintiff/Applicant seeks, inter alia, the following orders.

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2 That an injunction do issue restraining the 1st Defendant or his agents Insight Auctioneers or Leo Matinde the 2nd Defendant from disposing goods attached on the 14th March 2006 at the Plaintiff's premises Buru Buru Phase IV Extension, House No. 78/282 by public auction

3 That the 2nd Defendant do return or release the goods thereof (sic) proclaimed unconditionally

4 That the Defendants do bear the Costs of this Application.

The Grounds on which the application is founded are that the distress for rent is un-procedural having been carried out without leave of the business Premises Rent Tribunal in the presence of an opposed reference filed by the 1st Defendant on 16th December 2005, that the 1st Defendant has disconnected Water and Electricity from the premises when a dispute exists which act, according to the Applicant contravenes the provisions of the Landlord and Tenants, Shops Hotels and Catering Establishment's Act. Cap 301 of the Laws of Kenya and that the Applicant is a protected tenant. The applicant contends that given the above facts, the intended sale of the attached goods by public auction is illegal.

Whilst I have considered the submissions made by Counsel on 4th April 2006 and the documents filed by each of them in relation to the application I am constrained to find that the application cannot succeed having been brought under Order XXXIX of the civil Procedure Act yet it seeks final orders for

(i) a permanent injunction under prayer 2

(ii) a mandatory injunction under prayer 3

The law is very clear that permanent injunctions cannot issue without evidence being taken at a full trial. Order XXXIX is clearly expressed to apply only where temporary injunctions and temporary orders are sought. I find that the application as filed and presented before this Court is fatally defective notwithstanding that the said defects passed undetected by the Respondents.

Injunctive orders are equitable reliefs and equity follows the law. For this reason I am unable to exercise my discretion in favour of the applicant and I have no option but to disallow the application. The same is hereby dismissed with no order as to costs.

Dated and Delivered at Nairobi this 14th day of July 2006

MG. MUGO

JUDGE

Delivered in the presence of

Kahuthu for Applicant

No appearance for Respondent