



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

Civil Case 117 of 2006

ARTHUR K. APUNGU.....PLAINTIFF

VERSUS

TELKON KENYA.....DEFENDANT

RULING

The Applicant herein filed a Chamber Summons dated 8th February 2006 and amended on 13th February 2006, seeking orders by way of an interim injunction restraining the Defendant, inter alia, from:

1. alienating , damaging wasting disposing of or in any manner whatsoever dealing with property known as L.R No. 1/188 Kilimani Nairobi until the determination of the suit, the application or until further orders of the court.
2. Evicting and or interfering with the peaceful and quiet possession, occupation and enjoyment by the Plaintiff of L.R No. 1/188/ Kilimani – pending the determination of the suit, the application or until further orders of the court.
3. Prematurely terminating the Plaintiffs employment.

Additionally the Applicant seeks a mandatory order compelling the Defendant to reinstate his salary and all benefits, entitlements pending the hearing of the suit or further orders of the court.

The application is founded on the grounds that the Defendants/Respondent threatened to evict the Plaintiff/Applicant from the suit premises despite their having granted him a first option to purchase the same which option he has duly accepted, secondly, that the Respondent has purported to retire the Applicant prematurely before his attaining retirement age and has in furtherance thereto stopped the Applicants emoluments and benefits since July 2005 thereby causing him undue hardship, financial stress embarrassment and anguish.

It is common ground that the property L.R. No 1/188 Kilimani belongs to the Defendant /Respondent and has been occupied by the Applicant as an employee of the Respondent. Clearly the applicant has no proprietary interest, legal or equitable over the said premises.

The Respondents wish that he vacates and hands over the premises having served him with a notice of Retirement on age grounds. The Respondents claim to have computed the applicant's on the basis of the information the applicant furnished them with at the date of Employment on 31st August 1970 which

gave the Applicant's year of Birth as 1950. The Applicant claims he was born in 1952 and has produced, as annexures to support his application, certain documents all acquired and/or completed in later years and showing a birth date of 29th November 1952. It is on the basis of these documents the Applicant contends that he is due for retirement on that date in 2007. I have considered the submissions by counsel for both parties and will be quick to mention that the bulk of those submissions went to the merits of the suit itself and only briefly did counsel for the Respondent submit that the Applicant has no legal interest in the suit premises and that damages would be his only remedy. The Applicant says he exercised the option to purchase the property but has not alluded to any agreement for sale or perhaps the payment of deposit as would confer upon him a purchaser's interest. The Applicant has not told the Court how the contract of employment is tied to the provision of housing for the court to conclude that the notice to vacate should be taken as a threat to a breach of contract which I must pre-empt by issuing the injunction sought. I find that the applicant has no legal or equitable interest in the company house to warrant an injunction being granted against his eviction.

As regards the retirement, Counsel for the Respondent has submitted on the strength of the Replying affidavit of 20th February 2006 and the Supplementary affidavit of 24th March 2006, which is not challenged, that the retirement has already been put into effect and accepted by the applicant who continues to draw monthly pensions. With due respect I do not find any grounds to exercise my discretion to injunct the Respondents given those facts. The restraining orders as well as the mandatory injunction sought in prayer 5 of the application cannot issue. I am of the considered view that the Applicant has failed to demonstrate a prima facie case with a probability of success and that damages would be an adequate remedy given the nature of the case and also the status of the Defendant. The application is therefore refused and is accordingly dismissed with costs.

Dated and delivered at Nairobi this 7th day of July 2006

M.G. MUGO

JUDGE

Delivered in the presence of

Mr. Asinuli for the Applicant

Mr. Mogeni for the Respondent