



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

Civil Case 1416 of 2004

**REDBULL GROUP LIMITED.....
.....PLAINTIFF**

VERSUS

**RENT MANAGEMENT LIMITED.....1ST
DEFENDANT**

**AUTO-SILO (QUEENS WAY) LIMITED.....2ND
DEFENDANT**

**TIMOTHY OTIENO AWUOR T/A NAIROBI CONNECTION SERVICES.....3RD
DEFENDANT**

RULING

The Applicants herein are claimants in a counterclaim filed in the 1st Respondents suit wherein this court has found that the 1st Respondent Lacks no locus standi to sue the applicants. The 2nd Respondent is as is clearly evident from that Ruling, in occupation of the suit premises by virtue of an illegal assignment by the 1st Respondent of the suit premises which are the undisputed property of the Applicants.

The applicants have brought this application seeking orders for the delivery/handing over of possession of the suit premises previously leased to the 1st Respondents under a lease dated 1st September 2002.

The application is based on the grounds that the 1st Respondent has breached the terms of the lease by not paying rent leading to forfeiture of the lease. The documentation filed in support of the application clearly demonstrate that the 1st Respondent is in arrear of rent payment a fact which has been upheld in the findings of the honourable Mr. Justice Osiemo in the cited related Ruling dated 11th May 2005, which

has neither been reviewed, varied or set aside. The said Ruling is relied upon by the applicants to prove also that the 2nd Respondent's sub-leasing of the Applicants property in violation of the terms of the lease between the Applicant and the 1st Respondent conferred no proprietary interest in the 2nd Respondent who is in the circumstances a trespasser in the suit premises.

I have perused the copy of the lease annexed to the supporting affidavit and observed that clause 5 (b) of the same gives the Lessor an automatic right to forfeiture and the right to re-enter the suit premises. The said clause reads as follows:

“If the rent hereby reserved or any part thereof shall at any time be unpaid for 7 days after becoming payable (whether lawfully demanded or not) or if any of the covenants on the part of the lessee herein contained shall not be performed and observed then in any of the said cases it shall be lawful for the Lessor to re-enter upon the demised premises or any part thereof in the names of the whole and thereupon this lease shall determine absolutely but without prejudice to the right of action of the Lessor in respect of any antecedent breach of any of the covenants on the part of the Lessee herein contained” (underlining my own).

As is clear from the evidence adduced in support of the application, which is not challenged (the Respondents having failed to file any Grounds of opposition or Replying Affidavit) and the Ruling of 11th May 2005 that the 1st Respondent is in clear breach of the lease by not paying rent as required and sub-letting the premises to the 2nd Respondent in violation of the terms of the lease. I find therefore that the Lease herein stands determined and the Applicant is indeed entitled to the immediate delivery of the suit premises.

The Respondents having been given notice to deliver up possession but having ignored the said notice which, notice was not mandatory in the first place, I hereby allow the application and order that the Respondents do deliver up the suit premises in vacant possession within the next 21 days failing which eviction do issue. The applicants shall have the costs of this application.

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

M. G. MUGO

JUDGE

Delivered in the presence of

Mr. Kibet for the Applicant

Njoroge Mwate holding brief for Nyandieka for the Respondent