

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS

Civil Case 536 of 2006

UDAY NATVERLAL GANDHIPLAINTIFF

VERSUS

MUKESH P. SHAH1ST DEFENDANT

WAGLEY AUCTIONEERS2ND DEFENDANT

RULING

The Plaintiff came to court exparte on a certificate of urgency on 27th September, 2006 for hearing of chamber summons dated 20th September 2006. The plaintiff sought in the Chamber summons that he brought under the certificate of urgency dated 25th September, 2006 an order to restrain the defendant from levying distress for rent arrears. On that day the 27th September, 2006 the court granted the plaintiff interim exparte injunction. The interpartes hearing was set to be on 5th October, 2006. On the 5th October, 2006 neither the plaintiff nor the defendant being present in court the matter was stood over generally. The Plaintiff appeared before the Duty Judge in the afternoon on 5th October, 2006 when orders were extended up to the 12th October, 2006. The matter came for hearing before me on that day on the plaintiff's application by Notice of Motion dated 5th October, 2006.

The Plaintiff sought that the interim orders be reinstated and that the Chamber summons dated 25th September, 2006 be fixed for hearing interparties. That application was opposed and the Plaintiff's counsel in submission stated that he sought to be excused for his failure to attend court in the morning of 5th October, 2006 because he was held up in traffic jam on Thika road. He stated that he arrived in court after the matter had been stood over generally. In his argument he said that the court should not punish the plaintiff for the failures of his advocate. The application was opposed by the defence counsel and the grounds of opposition were that the notice of Motion before court is untenable and unknown in law. Further that the application is misconceived frivolous and an abuse of the court process. Defendant's counsel argued that the orders sought by the plaintiff cannot be extended because such extension is not envisaged under Order XXXIX of the civil Procedure Rules in particular rule 3. He stated that other than that rule an exparte injunction can only be for 14 days and cannot be for a period in excess of those days. He stated that that is the reason why the defendant is of the view that the application before court is unknown in law and an abuse of the court process. He summed it up by saying that the plaintiff should not be wasting the time of the court with unnecessary applications. In brief response the plaintiff's counsel stated that the defendant intended to sell the plaintiff goods that had already now been distrained and it was therefore necessary to extend injunctive orders to protect the plaintiff's property. He was of the view further that exparte orders could be extended and that such extension now cannot be regarded as being exparte.

The Plaintiff is quite correct in his submission that the injunction can be extended since the defendant is now present before court. Such extension cannot be said to be exparte in view of the presence of the defendant.

I have considered the plaintiff's application and I find that the plaintiff's counsel has sufficiently given explanation for his absence in court on the 5th October, 2006. That explanation was not controverted by the defendant. I do therefore find that the application is fit and proper matter for this court to invoke its inherent powers and also to invoke Order XXXIX of the Civil Procedure Rules and to extend the interim orders granted hereof. The court at the reading of this ruling will indicate the period of such extension of the interim orders granted on the 27th September, 2006.

MARY KASANGO

JUDGE

Dated and delivered this 18th October, 2006

MARY KASANGO

JUDGE