

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

Civil Case 490 of 2006

LAMSONS INDUSTRIES LTD.....
PLAINTIFF

VERSUS

COUNTY PRIDE LTD1ST
DEFENDANT

STEPHEN KARANJA T/A DALAI TRADERS.....2ND
DEFENDANT

RULING

The plaintiff is a limited liability company carrying out business at Banana Limuru.

On the 4th May 2006 the defendant through the Dalai Traders came to their business premises and proclaimed the plaintiff's good claiming that they had been instructed by the defendant on the ground that the plaintiff owes the defendant Shs.10,000,002/= in rent arrears.

The plaintiff immediately filed this suit denying the claim and together with the plaintiff filed this Chamber Summons seeking temporary injunction against the defendant to restrain it from interfering, handling or tampering in any manner with the plaintiff's business until the hearing of this suit.

The application is based on the grounds that the plaintiff does not owe the defendant any money in terms of rent. The application is also supported by an affidavit sworn by Sobhagchand Lalji Shah in which he avers that on or about June 2005 the plaintiff company entered into a verbal lease agreement with the defendant where by the plaintiff took possession of the premises at an agreed rent of shs.90,000/= per month; that plaintiff paid Shs.1,000,000/= rent in advance; that since the defendant's director is his brother in law he did not insist to be issued with the payment receipt immediately as he trusted him and there was no lease agreement; that he was surprised when on 4th May 2006 the defendant came to proclaim his goods to levy distress in the property mentioned herein; that the letter shown to him indicated that the defaulters of rent were Filtex Ltd and not the plaintiff company; that the said Filtex Ltd is a stranger to the plaintiff and are not in occupation of the suit premises; and that the plaintiff took possession of the premises from 1st June 2005 with the full knowledge of the defendant.

The application is opposed by the respondent who has filed replying affidavit sworn by DINESH SHAH in which he avers that there was no verbal agreement between the plaintiff and the defendant to occupy the suit premises nor was there agreement that the plaintiff do pay a monthly rent of Shs.90,000/=; that initially the suit premises were leased to FILTEX LTD for a term of 5 years 3 months and the agreed rent was Sh.100,000/= per month for the first 3 years and then Sh.150,000/= for the balance of unexpired term; that no rent was paid; that the plaintiff and Filtex Ltd are of the same family and own the business jointly.

Both counsel agreed by consent to put in written submissions which they did.

Mr. Nyaberi counsel for the applicant submitted that the applicant paid all its rent when due and there

is no rent arrears. He further submitted that even if it had not paid any rent at all it could not have accumulated to Shs.10,000,000/= and that the defendant did not serve the plaintiff with notice to show how much money is owing and no invoices indicating the outstanding amount and also there was no documentary proof of the amount claimed while Mr. Taibjee counsel for the respondent submitted that no monthly rent was agreed and there was no payment of rent has been made as the applicant did not produce documentary evidence of payment. Mr. Taibjee further submitted that the suit has no chances of success at all and that the applicant has not satisfied the requirements of granting of an injunction.

The dispute in this suit is whether there was a lease agreement between the plaintiff and the defendant, and if there was, what amount was payable monthly and how much rent has been paid so far and how much is the outstanding arrears. On application for an injunction in and of the plaintiff's alleged right, the plaintiff has to satisfy the principles of granting an injunction as were laid down in the often-quoted case of *GIELLA VS. CASSMAN BROWN* EA 358 at page 360.

They are. First an applicant must show a prima facie case with a probability of success. Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt it will decide an application on the balance of convenience.

After considering the submissions of both counsel for the applicant and the respondent, I am satisfied that this is a suitable case that an interlocutory injunction should issue.

Accordingly the application is granted in terms of prayer 2 and 3 of the Chamber Summons dated 12th May 2006.

Dated and delivered at Nairobi this 3rd day of October 2006.

J.L.A. OSIEMO

JUDGE