



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

Civil Case 1530 of 2001

KANTILAL NARSHI SHAH.....1<sup>ST</sup> PLAINTIFF

DIPESH KANTILAL SHAH.....2<sup>ND</sup> PLAINTIFF

VERSUS

CHANDULAL NARSHI SHAH .....RESPONDENT

R U L I N G

In the Plaint dated and filed on the 6<sup>th</sup> september 2001, Kantilal Narshi Shah and Dipesh Kantilal Shah (**"the plaintiffs"**) seek (*inter alia*) an injunction restraining Chandulal Narshi Shah (**"the defendant"**) –

**" (a) from entering the plaintiffs premises and detrainng and removing and carrying away the plaintiffs' moveable goods and chattels lying in or about the plaintiffs' shop premises on Land Reference Number 209/1236**

**Kolobot Road Nagara Nairobi in pretended recovery of arrears of rent and in any way interfere with the rights of the plaintiff to occupy and peacefully care on their business in the premises on Land Reference Number 209/1236."**

Pending the hearing of the Plaintiffs' suit, the Plaintiffs took out a Chamber Summons application dated and filed on the 29<sup>th</sup> November 2004 in which the Plaintiffs have moved this court for orders including a temporary injunction to restrain the Defendant from levying distress upon the First Plaintiff's property. The application is premised upon the four grounds as set out therein and supported by the affidavit of the First Plaintiff, Kantilal Narshi Shah, made on the 29<sup>th</sup> November 2004. The Defendant opposes the application upon grounds and reasons contained in his replying affidavit sworn and filed on the 9<sup>th</sup> December 2004.

By consent of the parties recorded before me on the 24<sup>th</sup> February 2004, the parties have agreed that this court do make its ruling on the application based on the said supporting and replying affidavits respectively as their respective learned counsel did not find it necessary to make any submissions thereon.

Having read the said supporting affidavit and the said replying affidavit in conjunction with the Plaint and the Statement of Defence dated the 20<sup>th</sup> September 2001 and filed on the 25<sup>th</sup> September a 2001, I find no evidence whatsoever to support, or even suggest, that **"the plaintiff occupy one half of the premises on plot Number 209/1236 as owners and the other half as his (the Defendant's) tenants"** as pleaded in paragraph 4 of the Defence. In paragraph 8 of the Defence, the Defendant admits that he agreed to the running of the Second Plaintiff's business on the suit property but the Defendant avers (*inter alia*) that the Second Plaintiff's occupation and user was subject to **"the plaintiffs paying him (the Defendant) half of the rent recoverable from the premises"** - yet no evidence whatsoever has been adduced by the Defendant in support of his claim.

In the minutes of the meeting held on the 28<sup>th</sup> February 1999 at the offices of Rustam Hira, Esq., Advocate, whom the parties appointed sole Arbitrator, the Defendant, as testified by his signature thereof, agreed **"that various respective names and that the same should be immediately valued save and**

**except the 3 properties in Meru, namely, the farm and the 2 vacant plots as there was no dispute as to the respective values thereof"**

Subsequently, and in his final award made on the 20<sup>th</sup> June 2002, the Arbitrator confirmed that agreement between the parties to the intent that the attempt by the Defendant **"to levy distress against Kanti's (the First Plaintiff) premises was not only irregular but unlawful and as such distress must immediately be withdrawn and any suits filed must be sealed forthwith."**

In light of this evidence, I find and hold that the Defendant's purported distress of the First Plaintiff's property is contrary to the express agreement between the parties and the Arbitrator's Award and therefore unlawful. Accordingly, the Chamber Summons application dated and filed on the 29<sup>th</sup> November 2004 succeeds in part and is allowed but only in respect of an injunction in terms of prayer No. 3 thereof which is hereby granted and orders accordingly with costs to the Plaintiffs.

It is further ordered that prayers 4 and 5 of the application be and are hereby struck out as the Plaintiffs have not adduced any evidence to show that the Defendant is in contempt of any order of this court because although the Arbitrator's Award was duly filed on the 7<sup>th</sup> October 2003 pursuant to Notice of Motion dated the 18<sup>th</sup> June 2003 filed on the 25<sup>th</sup> June 2003 in HC Misc. Civil Application No. 690 of 2003, the other orders sought in that Notice of Motion were never pursued or granted.

Dated and delivered at Nairobi this 4<sup>th</sup> day of March 2005.

P. Kihara Kariuki

Judge