

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 304 of 2005

COMPLETE VIDEO LTD.....PLAINTIFF

VERSUS

JOSEPH STEPHEN MURIU

WAMATU NJOROGE(sued as joint administrator

of the Estate of Stephen Flavian Mwangi.....DEFENDANT

RULING

The plaintiff by way of this Chamber Summons expressed to be brought under Order XXXIX Rule 12, 3 and 9 of the Civil Procedure Rules and Section 3 of the Distress for Rent Act Cap 293 and Section 3A Civil Procedure Act seeks orders that the Defendants by themselves, and/or their servants and/or their agents and in particular M/S Cash Crop Auctioneers be restrained from seizing and/or advertising for sale and/or selling the plaintiff's assets proclaimed on 28th January 2005 in any manner whatsoever proceeding with levying of distress and/or further distress for rent allegedly due pending the hearing and final determination of this suit.

The application is premised on the grounds that the plaintiff has reason to believe that the Defendants title to the said property is fraudulent and in any case the same has been transferred to a third party prior to the date of proclamation and thus the landlord – Tenant relationship between the parties thereto had ceased.

Thus the alleged distress for rent was unlawful and unprocedural. The application is supported by sworn affidavit of Stephen Paul Price who has deponed among others that since the Lease Agreement was entered into he has discovered that suit property had a questionable title and that the suit property had been transferred to a third party and decided to stop payment of rent and deposit the payable rent to in an account until the hearing is found or until the hearing and determination of this suit.

Counsel for the applicant submitted that since the respondent did not have legal title to the premises the purported lease was illegal. Secondly that since the premises had been transferred, the landlord – tenant relationship ceased and therefore the levying of distress for rent was unlawful.

The respondent did not attend to oppose the application although the date was taken in court in the presence of both counsels.

The application is allowed in terms of prayer 2 until the hearing and determination of the suit. Costs in the cause. Dated this 23rd day of June 2005.

J.L.A. OSIEMO

JUDGE