



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Suit 464 of 1999

- 1. LOINGE PRINTERS 1ST PLAINTIFF**
- 2. CHARLEEN INSURANCE BROKERS 2ND PLAINTIFF**
- 3. ARSO 3RD PLAINTIFF**
- 4. MILLENIUM INSURANCE BROKERS 4TH PLAINTIFF**
- 5. MODERN SECRETARIAL SERVICES 5TH PLAINTIFF**
- 6. HESIMA INSURANCE BROKERS 6TH PLAINTIFF**
- 7. BUSINESS REGISTRARS 7TH PLAINTIFF**
- 8. KINYANJUI & ASSOCIATES 8TH PLAINTIFF**
- 9. SURVEY CONSULTANTS 9TH PLAINTIFF**
- 10. ATHARA & PARTNERS 10TH PLAINTIFF**
- 11. RUNJI & PARTNERS 11TH PLAINTIFF**
- 12. BARLANY CAR HIRE SERVICES 12TH PLAINTIFF**
- 13. RUMBA KINUTHIA & CO., ADVOCATES 13TH PLAINTIFF**
- 14. DR. SAMSON WANJALA 14TH PLAINTIFF**
- 15. GROSSBY AGENCIES 15TH PLAINTIFF**
- 16. KIMURA & ASSOCIATES 16TH PLAINTIFF**
- 17. WEST CONSULT 17TH PLAINTIFF**
- 18. PENTIUM TECHNOLOGIES 18TH PLAINTIFF**
- 19. WORLDWIDE CHURCH OF GOD..... 19TH PLAINTIFF**
- 20. DR. D.K. KIBUGA 20TH PLAINTIFF**

21. BONUS TRAVEL	21ST PLAINTIFF
22. PLANO CONSULT	22ND PLAINTIFF
23. HOTEL & ADVENTURES TRAVEL	23RD PLAINTIFF
24. COPOS LIMITED	24TH PLAINTIFF
25. INTEX S.S. ENTERPRISES SERVICE	25TH PLAINTIFF
26. ICHANGAI GICHUHI & ASSOCIATES	26TH PLAINTIFF
27. INBRED ARCHITECTS	27TH PLAINTIFF
28. MOHINDRA ENTERPRISES	28TH PLAINTIFF
29. NJERU NYAGA & ASSOCIATES	29TH PLAINTIFF
30. KENYA INSTITUTE OF PROFESSIONAL STUDIES.	30TH PLAINTIFF
VERSUS THE CITY COUNCIL OF NAIROBI	
DEFENDANT	

RULING

The Applicants seek an injunction in the following terms: -

“(2) **THAT** the Defendant be restrained either by itself, its agents and/or servants from implementing and/or enforcing terms and /or provisions of Gazette Notice dated 14th December, 2001 or in any manner whatsoever increasing the Plaintiffs/applicants rents and/or service charges until further orders of this court.”

The grounds on which it is sought are as follows:

- (a) **THAT** the Plaintiff have been tenants of the Respondents for over twenty years;
- (b) The Respondent purported to raise the rent payable by the Plaintiff by way of a Gazette Notice dated 14th December, 2001;
- (c) **THAT** in so doing the Applicants were not consulted at all, and the resultant proposed increments were translated to a massive and oppressive 283%;
- (d) **THAT** the Plaintiffs had challenged the said Gazette increments by way of Judicial Review in High Court Misc. application No.478 of 2002 and thereafter in Civil Appeal NO. 301 of 2002.
- (e) **THAT** the Court of Appeal found one of the main reason for challenging the increment being poor service by the Respondent, the same cannot be addressed through Judicial Review as they were matters of evidence and hence the present proceedings.
- (f) **THAT** the arrears based on the new rates are quite huge and unless the Respondents is restrained from recovering the same, the applicants business may be totally crippled.

The Applicants challenged the Gazette Notice, as stated on the grounds, by way of Judicial Review.

In a Judgment on Appeal from the decision of Mr. Justice Rimita the Learned Court of Appeal held that:

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1. The Gazette which was lawful and

2. The Landlord & Tenant (Shop, Hotel & Catering Establishment) Act does not apply to the City Council.

In order to succeed the Applicant must show that it has a prima facie case with a probability of success and that damages would not be an adequate remedy. What the Applicant is trying to attain is an order restraining the Respondent from enforcing the Gazette Notice.

This can only be ordered where the Gazette Notice is unlawful or is null and void for some reason. However in the Appeal referred to above the Learned Court of Appeal found that the legal Notice was valid. Although in different proceedings that is a finding which even if not binding on this court is persuasive so that this court must take notice of it. In the result I cannot issue an injunction to restrain the Respondent exercising their lawful rights in respect of the Gazette Notice.

I therefore decline to grant the orders asked for and dismiss this application with costs to the Respondent.

Dated and delivered at Nairobi this 23rd day of June 2005

P.J. RANSLEY

JUDGE