



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 852 OF 2003

CAESAR'S LIMITED..... PLAINTIFF

VERSUS

KENYA NATIONAL ASSURANCE COMPANY

LIMITED (2001) LTD.....1ST DEFENDANT

GIMCO LIMITED..... 2ND DEFENDANT

R U L I N G

1. The Application before me would be determined very simply by asking the question whether there exists a valid Lease held by the Applicant with respect to Mezzanine floors 1 and 2 within L.R. No. 209/1846 otherwise known as Corner House. Once that question is determined then the Application dated 8th August 2003 would be easily disposed

2. The Application aforesaid seeks orders under order 39 Rule 2 of the Civil Procedure Rules for orders as follows: -

a. That a temporary injunction be issued restraining the Defendants, whether by themselves, their servants and or agents or howsoever, from advertising or offering for lease/rent the premises known as mezzanine floors 1 and 2 within L.R. No. 209/1846, otherwise known as Corner House, pending the hearing and determination of this suit.

b. Costs be met by the Defendant.

3. In the Supporting Affidavit of Karim Abanny sworn on 8th August 2003, it is deponed for purposes of the question I have paused above that there are in force two Lease Agreements exhibited as "KA 1-A and B" with regard to the suit premises. The two Leases were registered on 11th June 2002 at the Central Lands Registry. The same are for a period of ten (10) years each from the 1st June 2002. They have the usual clause for termination, which is of no relevance at this point.

4. What has triggered these proceedings is that despite the Lease Agreements aforesaid, the 2nd Defendant on the instructions of the 1st Defendant proceeded to advertise the space occupied by the Plaintiff as if it was vacant space.

5. If the same is let out to third parties, it is deponed at paragraph 11 of the Supporting Affidavit that the Plaintiff will suffer substantial loss. It is said by the deponent that: -

"The Plaintiff intended and still intends to run a discotheque and club within the demised premises and to that end, has incurred immense cost, estimated at approximately Kshs.10

million. Moreover, the Plaintiff continues to lose close to Kshs.1 million every month by way of lost profits and all on account of the 1 st Defendant's laxity. Annexed hereto and marked "KA-B" 'a' & 'b' are copies of a report of the 1 st meeting of the Plaintiff's Board of Directors and cash flow analysis

6. At paragraph 12 thereof and for good measure, it is added that:-

"As a consequence of the Defendants' actions and especially the attempt to deprive the Plaintiff of the demised premises, the Plaintiff now stands to suffer irreparable loss and damage and to have well over a year's hard work rendered nugatory. It is therefore the Plaintiff's earnest prayer that the Defendant's be estopped from breaching the agreement any further, as they obviously intend to."

7. The 1st Defendant raises two issues regarding the validity of the Leases: - firstly that they were executed on its behalf by the official Receiver who had no capacity to do so. Secondly, at paragraph 6 of the Replying Affidavit of Julius Nenzou on behalf of the 1st Defendant it is deponed as follows: -

"That the 1 st Defendant shall move this Honourab le Court to de -register the subject leases on the grounds of illegality, inter alia , but also on the grounds that the lease terms were manifestly unfavourable to ourselves in terms of the length of the lease period and rental income thereof."

8. Other issues although important are really peripheral to the focus of this Ruling.

9. To my mind a Lessee occupying premises on the basis of a valid and lawful Lease Agreement cannot be evicted without either the Lease being invalidated or proper Notice under it being given. There are issues of law and fact raised regarding the validity or invalidity of the Leases in this matter. These are matters for trial.

10. For my part, the Plaintiff/Applicant has made out a case in its Application for grant of an Interlocutory Injunction. The Principles in *Giella vs. Cassham Brown* have been met. The Defendant prior to finalization of the suit is not saying that it will suffer any prejudice, as rent is properly payable to it in the period between now and the determination of the suit.

11. In the circumstances, the Application dated 8th August 2003 is hereby allowed with costs. Orders accordingly.

Dated and delivered at Nairobi this 19th day of February 2004.

I. LENAOLA

Ag. JUDGE

19.2.2004

Before Lenaola Ag. J.

Amos CC

Mr. Nyamai for Miss Omondi for Defendant/Respondent

No appearance for Applicant.

I. LENAOLA

Ag. JUDGE