



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
CIVIL CASE NO. 295 OF 2002

KOMBO MFAKI KOMBO ..... PLAINTIFF

- Versus -

MWIDANI YAHYA MZEE & ANOTHER ..... DEFENDANT

R U L I N G

On 9th December 2003 I transferred this suit suo moto to the Chief Magistrate's Court for hearing and final disposal. I extended the exparte injunction herein for a period of 14 days. It would appear that the transfer was not effected with the result that that order lapsed. Taking advantage of that situation the plaintiff in HCCC No. 359 of 2000 evicted the defendant in that case from the suit premises. That defendant is said to be the purchaser of the suit premises from the plaintiff in this case. The order of injunction in this suit which lapsed was actually protecting the defendant in HCCC No. 359 of 2000. The plaintiff in this case has now applied that I should review the order of transfer and set it aside and issue a mandatory injunction to reinstate the defendant in HCCC No. 359 of 2000 into the suit premises. The application is made on the ground that the Chief Magistrate's Court will not "review an order of a superior court such as the warrants obtained herein" No warrants have been issued herein. Perhaps the plaintiff means the warrants of eviction issued in HCCC No. 359 of 2000.

The application for review is strongly opposed on the ground that this court having transferred this case to the subordinate court it has no jurisdiction to entertain this application. With respect to counsel that is not correct. This court has powers if satisfied that the application has merit to review its order of transfer and retransfer the case back to this court.

The other ground raised in opposition to the application is that to issue the mandatory injunction sought would in effect be reviewing the eviction order issued in HCCC No. 359 of 2000. I entirely agree with that argument. Besides that, other than the first defendant who is the plaintiff in that other case, the other parties are different. The plaintiff's purchaser having been evicted pursuant to an order in HCCC No. 359 of 2000 I cannot issue a mandatory injunction in this case to reinstate him into the suit premises. In any case it is trite law that mandatory injunctions are only issued in special circumstances. Those circumstances have not been shown in this application. That limb of this application is therefore dismissed.

On the application for review no ground in compliance with Order 44 has been given to warrant a review. In any case there is no order issued by this court in this case that will tie the Chief Magistrate's Court in hearing any issue in this case. This limb of the application also fails. In the result the plaintiff's application dated 16th March 2004 is dismissed in its entirety with costs to the Respondent.

DATED this 29th day of March 2004.

D.K. Maraga

Ag. JUDGE