



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1831 OF 2002**

**SHURISHCHANDRA BHARMAL SHAH .....PLAINTIFF**

**VERSUS**

**PRAFULCHAND BHARMAL M. SHAH .....DEFENDANT**

**R U L I N G**

The applicant has brought this application seeking an injunction to restrain the defendant from levying distress under Order XXXIX Rule 1 and 2 of the Civil Procedure Rules. The plaintiff/applicant filed in an affidavit in support of the application while the respondent opposed the application. According to the applicant the two parties are brothers owning the property in dispute. The applicant has challenged the capacity of the defendant/respondent to levying distress for revenue against him since the property does not attract revenue.

Mr. Mugabi for the respondent argued that the respondent/defendant has capacity to levy distress against the applicant since the plaintiff has denied the respondent access into the premises.

I have considered this application carefully. In my own considered view it would be unfair for the respondent to levy distress on the applicant, yet the two own the property as tenants in common.

I therefore allow the prayers sought pending the outcome of the main suit. Order accordingly.

**R.M. MUTITU**

**JUDGE**

**14.1.2003**

Delivered in open court in the presence of Mugabi for the defendant and Aswao for the plaintiff.

**R.M. MUTITU**

**JUDGE**

**14.1.2003**