

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.93 OF 2001

DWIJENDRA KURMA VARMA t/a

RIFKINS BUSINESS COLLEGE PLAINTIFF

VERSUS

NATIONAL UNION OF KENYA

MUSLIMS TRUST FUND DEFENDANT

R U L I N G

By an amended plaint the Plaintiff seeks an injunction against the Defendant pending determination of this suit. The suit arises out of disagreements between himself as tenant and the Defendant as his landlord. He states he has paid all the rent due but the landlord demands a sum of Shs.89,100 purportedly being arrears of rent and has threatened to levy distress if the said sum is not paid. The applicant therefore filed this application to restrain the distress and a temporary stay and other consequential reliefs. The grounds are that no rent is in arrears and if distress is allowed the Defendant will throw out the Applicant while the tenancy is controlled. The applicant says he runs an institution known as “RIFKINS BUINSESS COLLEGE & TYPING BUREAU” and that he pays rent regularly. In fact he says has paid higher rent than lawfully due because of an oversight on his part. He has exhibited a schedule showing how much he has paid – “DKV 3”. He further says if distress is allowed he will suffer great loss of business assets, business will come to a standstill and he will suffer great loss and loss of business reputation and the students enrolled will lose greatly.

In reply the Respondent opposes the application and asserts that the Plaintiff is in arrears to the extent of Shs.89,100/-. From the submissions of both counsel and upon perusal of the affidavits filed on both sides it is clear that the basic rent of Shs.33,000/- per month is being paid regularly but that this dispute relates to the payment of increment amounting to Shs.9,900/- per month.

I find that for that sum the applicant stands to lose substantially if distress is levied and the rights of third parties will be definitely affected. It is my view that the dispute can be resolved upon a full trial with each party producing full evidence as to the interpretation of the lease and the said Tribunal Order. In the meantime although the remedy of unlawful distress is in the damages under Chapter 293 this should be in clear cases where there is no serious dispute. In the present case I find the Applicant will suffer substantial loss which cannot be compensated in damages. The applicant is in premises carrying on business which concerns other persons. The balance of convenience tilts in his favour. For these reasons orders are granted as prayed.

Costs in the caus.

Dated at Mombasa this 3rd Day of May, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE

Read in presence of Mr. Doshi.

Mr. Nyongesa – No appearance.

J. KHAMINWA

COMMISSIONER OF ASSIZE