

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL CASE NO. 2662 OF 1998

CHRISTOPHER GIKONYO MAINA.....PLAINTIFF

- V E R S U S -

K-REP HOLDINGS LIMITED.....DEFENDANT

R U L I N G

This is an application by the Defendant under Order VI Rule 13(1) (b) (c) and (d) and 16 of the Civil Procedure Rules. In it, the Defendant seeks to have this suit struck out on the basis that it is scandalous, frivolous and vexatious and that it may prejudice, embarrass or delay the fair trial of the action and is otherwise an abuse of the Court process. It was also stated that the Plaintiff's cause of action had already been overtaken by events.

On 27th November, 1998 the Plaintiff filed this suit against the Defendant seeking the following:

- (a) A declaration that the distress for rent was unlawful; and
- (b) an injunction to restrain the Defendant from levying distress and/or interfering with the Plaintiff's premises and business. On 3rd May, 1999, the Plaintiff filed an application for injunction which was granted.

Mr. Kinyanjui for the Defendant argued that since the prayers sought in the Plaint had already been granted this suit had been overtaken by events as all issues had been settled. The Plaintiff did not file any replying affidavit but his Advocate argued that an application under Order VI rule 13 (1) (b) and (c) was very drastic and that the suit in this case was not hopeless since the Court had granted an interlocutory injunction in it. Although there was no evidence of this, he argued that the suit could be cured by amendment.

As was recognized in **Nitin Properties Ltd v. Jagjit Sing Kalsi & Ano**. NAIROBI C.A. Civil Appeal No. 132 of 1989 (Unreported) (GICHERU, AKIWUMI & SHAH, JJ.A.), the remedy for striking out is a drastic one which ought to be invoked only in plain and obvious cases and should be exercised with extreme caution. It is not clear at all how this suit "may prejudice, embarrass or delay the fair trial of the action." I do not see any abuse of the process of the Court. The fact that the Plaintiff's claim was partially allowed in an interlocutory application is not evidence that the suit has been overtaken by events.

I, therefore, dismiss this application with costs to the Plaintiff.

DATED and DELIVERED at NAIROBI this 18th day of June, 2001'

ALNASHIR VISRAM

JUDGE