



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1254 OF 2000**

MUKESH BHATT T/A

SUN PRINTERS & STATIONERS PLAINTIFF

VERSUS

SHIELD PROPERTIES LIMITED)

KENNETH SIKINYI OMWOMA) DEFENDANTS

T/A MUMBO AUCTIONS)

RULING

On 6th September 2000, I did grant application dated 13th July 2000 in which the present Respondent/Tenant sought injunction orders – one was mandating injunction to have his vehicle returned to him and second was prohibitory injunction in which the present Applicant/Landlord was restrained from attaching the present Respondents property, proclaimed on 7.7.2000, levying further distress against the present Respondent or otherwise dealing with his property pending the hearing and determination of the suit. Thereafter, the Respondent/Tenant obtained exparte interlocutory judgement against the present Applicant/Landlord but that interlocutory judgment was on 28th February 2001 set aside.

The Applicant has now filed this application seeking mainly one order. It is praying that the Plaintiff be ordered to pay his monthly rents from May 2000 in respect of the premises he occupies as a tenant of Land Reference Number 209/2659, Nairobi. It is also seeking costs of this application. The Applicant/landlord states as its ground in support of the application that the Plaintiff is carrying on his business in the suit property without paying any rent since May 2000. The application is supported by an Affidavit sworn by Nazmudin Ebrahim Esmail, the Applicant/First Defendants property Manager and two annexures. The Applicant maintains in that Affidavit that since the ruling delivered on 6th September 2000, the Respondent/Tenant has not paid any rent and insists that until accounts of the distrained goods is delivered no rent payment would be made by the Plaintiff. The Applicant maintains that the statement of account had been sent to the Respondents Advocate vide letter dated 7th December 2000. The total amount outstanding as on 31st March 2001 is K.shs 373,880.00. The monthly rent is K.shs 33,000/-. It annexed two statements of account i.e. one in respect of the period in dispute when the goods of the Respondent/Tenant were distressed to recover rent outstanding and one in respect of the total rent outstanding.

The Plaintiff/Respondent who is the Tenant opposes the application and has filed a Replying Affidavit. In its Affidavit sworn by the Manager of its business it raises mainly two matters. First is that the orders sought are tantamount to a review of the courts order made on 6th September 2000, that the application is seeking to have the court sit on appeal on its own decision. Second matter raised is that as a result of the

distress of the Respondent's property, the Respondent/Tenant has not found it easy to meet its rent obligations because of the drastic reduction in income.

My order delivered on 6th September 2000 did not at any stage order no payment of rent to the landlord. It was confined to the matters before me at that time which were matters raised in the application dated 13th July 2000. In that application the present Respondents, who were the Applicants sought orders in respect of prayer 2 and 3. These prayers were as follows:

"2. The First Defendant, its agents and/or employees be restrained from attaching the Plaintiff's property proclaimed on 7 th July, 2000, levying further distress against the Plaintiff or otherwise dealing with the Plaintiffs property pending the hearing and determination of this s uit.

3. The first Defendant do release the Plaintiffs motor vehicle registration number KWZ 862 forthwith ".

These were the orders that I did grant. None of them says that the Respondent (then Applicant) would cease paying rent to the Landlord/Applicant and I do not feel a court of law would make such an order unless for very good reasons as to do so would mean interfering with the contract between the parties willingly entered into by the parties. I cannot therefore see how I would be reviewing my orders or sitting on appeal on my own orders, by granting this order. In my humble opinion, the Respondent/Tenant in refusing to pay the rent due or in neglecting to pay the same or in its failure to pay the same, is in effect abusing a court order. He has not denied that he is still in the premises and doing business therein. He has not denied that he is not paying rent. All he is saying is that because of the distress for rent his business has gone down considerably and he blames the Applicant for the same and goes on to say that the Applicant is taking advantage of the illegality the Applicant has perpetrated and that granting the orders prayed for here would nullify the orders previously made and denying him the protection conferred by the court. I do not think the court in protecting the tenant wanted to deprive the Applicant of its rightly earned rents due to it. It cannot be said that by the Applicant seeking to get the Tenant/Respondent honour its rent liability, it is seeking to take advantage of what is alleged to be illegality of the distress. The distress was in respect of a different period and rent being sought is in respect of subsequent period. In any case parties will eventually take account and any rent if overpaid will be refunded.

The application is merited and I grant it, but as I have said, rent in respect of months prior to filing the plaint upto July 2000, were in dispute. I did grant injunction in respect of the same until the dispute is heard and determined. Rents from August 2000 to date were never the subject of the dispute. Those will be paid.

The application dated 6th April 2001 is granted. Respondent/Plaintiff to pay rent due from August 2000 to the end of May 2001 by 15th July 2001.

Respondent/Plaintiff to pay costs of this application. Orders accordingly.

Dated at Nairobi this 4th day of June 2001.

ONYANGO OTIENO

JUDGE