



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC APPEAL CASE NO.69 OF 2010

EDWARD ONYANGO.....1ST APPELLANT

BRENDA AKWACHA.....2ND APPELLANT

VERSUS

MOHAMED ALI MOTHAS.....1ST RESPONDENT

JEWEL AUCTIONEERS.....2ND RESPONDENT

RULING

1. **Edward Onyango and Brenda Akwach**, the Appellants, filed the notice of motion dated 16th September 2016, seeking for temporary injunction against **Mohamed Ali Motha and Jewel Auctioneers**, the Respondents, their employees, workers, agents and or whomsoever jointly and severally, restraining them from levying distress, attaching, advertising, for sale, selling, disposing, alienating, dealing and or interfering whatsoever with the Appellants quiet occupation of their business premises known as Kakwacha location along Odera Street within Kisumu town pending the hearing and determination of this appeal. The application is based on the 12 (twelve) grounds marked (a) to (l) on its face and is supported by the affidavit of Edward Onyango sworn on the 19th September 2016.

2. The application is opposed by the Respondents through the grounds of opposition dated 30th September 2016.

3. That directions on filing and exchanging written submissions were given on the 29th March 2017. The Counsel for the Appellants and Respondents then filed their written submissions dated 1st May 2017 and 20th September 2017 respectively.

4. The following are the issues for the determination by the court;

a) Whether the Appellants have established a reasonable case for temporary injunction order to issue at this stage.

b) Who pays the costs.

5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence, grounds of opposition, written submissions filed and come to the following findings;

a) That the Appellants and the 1st Respondent are tenants and Landlord respectively by virtue of the lease/Tenancy Agreement dated 24th May 2014 over premises on land parcel **Kisumu/Municipality Block 7/81**.

b) That the lease/Tenancy agreement is for a period of ten (10) years from 1st June 2014 and the rent is Ksh.90,000/= payable monthly in advance and not later than the fifth day of the month.

c) That the Appellants appeal as discerned from the memorandum, is over a ruling delivered in Kisumu CMCC No.183 of 2006 (sic) on the 14th September 2016 upon the Respondents preliminary objection on the court's jurisdiction. That in view of the fact that the matters of fact deposed on by the Appellants are not controverted or challenged by the Respondents, who only filed grounds of opposition, the court finds that the Appellants' have made a reasonable case for issuance of temporary injunction pending the hearing and determination of the appeal on condition that they continue paying all the monthly rent in accordance with the existing lease/Tenancy agreement.

6. That for reasons set out above the Appellants notice of motion dated 16th September 2016 is granted in terms of prayers 3 with costs in the

cause on condition that the Appellants continue meeting the monthly obligations in terms of their lease/Tenancy agreement with the 1st Respondent.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 2ND DAY OF MAY 2018

In presence of;

Appellants Absent

Respondents Absent

Counsel Mr. Onsongo for Odeny for Appellant

Mr. Onyango for Respondents

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE