

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 126 OF 2014

(Consolidated with Miscellaneous Civil Application No. 149 and 151 of 2015)

MILKI LIMITED.....PLAINTIFF

VERSUS

PATRICK MUKIRI KABUNDU.....DEFENDANT

R U L I N G

1. These two files were on the 9.9.2015 consolidated with High Court Civil Suit No. 126 of 2014. That consolidation was informed by the fact that all concerned what the plaintiff in the suit and the applicant in these two applications, and confirmed by the defendant/in HCC No. 126 of 2014 as a tenancy agreement between the two dated 2/1/2009 and created over that parcel of land situate within Mombasa County and known as Sub-division No. 1432 of Section I mainland North and Registered as C.R. 14247/1.

2. In these two applications the applicant PATRICK MUKIRI KABUNDU t/a IVORY SPORTS PUB seeks orders that the court stops all demolitions or constructions on the suit land pending the hearing and determination of the HCC No. 126 of 2014 as well as BPRT CAUSE NO. 33 OF 2013.

3. In Misc. 149 of 2015 the court was called upon to find JOE BRUNLENNER and JOSEF BRUNLENNER be nominated to civil jail and an order of sequestration of asset be issued against plot no. 14321/MN and CR No. 14247/1 at a value equivalent to Kshs.20,000,000 on the basis that the Business Premises Rent Tribunal in BPRT No. 33 of 2013 had issued orders which orders had been disobeyed by the landlord. The grounds of the application are that the order was duly served upon the landlord on 27/4/2015 and service acknowledged by one JOSEF BRUNLENNER in court during the hearing of HCC No. 126 of 2014 but despite service the alleged contemnors had refused to restore electricity to the suit premises.

4. I have pointed out that these three files were consolidated as they were considered related and a decision in one HCC No. 126 of 2014 would affect the others. This court did render a ruling in HCC 126 of 2014 on 3/5/2016, strike out the suit and ordered that the plaintiff in that suit hands over the suit premises to the landlord on or before the 30/6/2016.

5. Pursuant to that decision whether or not it be effected, there is no foundation upon which I can consider the merits of the application in these two files. I consider these two applicants overtaken by the events in that suit and now declare that the two files be closed unless an appropriate application shall be brought to reopen them.

Dated this 8th day of July 2016.

HON. P.J.O. OTIENO

JUDGE