



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NUMBER 200 OF 2013**

**RUMBA KINUTHIA**

**T/A RUMBA KINUTHIA & CO. ADVOCATES.**

**JOSEPH KARANJA WAMUGI.**

**T/A BARLANY SERVICES & BONUS TRAVEL**

**JOSEPH OLOO KENYAGAH**

**T/A MILLENIUM INSURANCE BROKERS**

**(Suing on their behalf and on behalf of 16 others. ....  
PLAINTIFFS**

**VERSUS**

**NAIROBI CITY COUNTY. ....  
DEFENDANT**

**R U L I N G**

The application before the court is the Notice of Motion by the Plaintiffs, dated 29<sup>th</sup> May 2013. It seeks mainly that this court issues a temporary injunction order preventing the Defendant, its agents and servants from evicting and/or interfering with the Plaintiffs/Applicant's occupation of their respective offices within the City Hall Annex building, pending the final determination of this suit.

The application is based on the grounds that the intended eviction of the Plaintiffs by the Defendant is not *bona fides* but a play to circumvent the relevant past rulings of court against such eviction and that it is aimed at frustrating intended determinations in existing court cases now pending on the same issue. The Plaintiffs also aver that the sought eviction is intended to allow the Defendant to rent the involved offices to new tenants at higher rents. They also aver that the eviction will result into untold hardship to the applicants who have held tenancies of the said offices for close to the last 30 years.

The application is seriously opposed by the defendant on the following grounds: -

- a. **That this suit and application is an abuse of the court process in that the Plaintiff/Applicants had earlier filed a similar suit HCCC No. 266 of 2011 and a similar application for similar injunction and had obtained an injunction but the suit and application were never fixed for disposal leading to the alleged lapse of the said injunction.**

- b. **That the vacation of the relevant premises will not lead to leasing the same to new tenants but will go to the new legal department of the City County which has already occupied the vacant offices earlier released to the council.**
- c. **That the Notice for eviction earlier served on the Plaintiffs is genuine and bona fides as the offices occupied by the plaintiffs are genuinely required for occupation by the new Legal department of the City County.**
- d. **That the vacation notices earlier served upon the plaintiffs are lawful.**
- e. **That this suit is Res Subjudice the HCCC No 266 of 2011 and should be struck out and the grievances of the plaintiffs which are exactly similar to those raised in the earlier suit be addressed in the earlier suit. More so because the parties are the same (City Council having been inherited by the transitioned City County) and the documents filed are same and the injunctions granted by the court exist and persist between the same parties and that the court should not allow two injunctions on the same subject matter to exist side by side.**

In reply to the above defences by the Defendant/Respondent, the plaintiff averred that the parties in this suit are not the same since the Defendant - Nairobi City County is not the same as the former County Council of Nairobi. That even if the parties, more so the Defendant, is the same if there was a lawful transition, nevertheless, the plaintiffs were served with a totally fresh Notice to Vacate their offices notwithstanding the existence of a court injunction against the defendant under the earlier suit. That accordingly, the Plaintiff's were under obligation to file a fresh suit and application to answer the new Notice to vacate.

This court has perused the application and the material in its support and has also perused and considered the defences raised by the Defendant.

The court observes and it is not in dispute between the parties, that suit No. HCCC no. 266 of 2011 exists and pends between the parties. Temporary injunctions were on merit issued to abide the final determination of the suit. The injunction orders were granted on condition that the plaintiffs file individual personal undertakings as to damages in case they eventually lost the suit and the undertaking were properly filed to that end. In this court's view and finding therefore, the injunction orders under the said suit do exist and will exist and persist between the parties therein until that suit is heard and finally determined or until the court on application or suo moto in proper circumstances, lifts or varies the same.

Taking the above as the correct legal position, which it so declares, the court finds it odd that the Defendant/Respondent, went ahead with full knowledge of that position, to issue a fresh Notice to the Plaintiffs to vacate their offices in violation and therefore contempt of court orders. If the Defendant being the Nairobi City County, for any possible reason considered itself as a different entity from its predecessor, the City Council of Nairobi it had freedom on that basis and for the sake of the subjudice rule, to issue the fresh eviction notices on the plaintiffs and in that case, it would expect the Plaintiffs to seek new protection by filing a fresh suit and injunction application. If on the other hand, the Defendant in the earlier suit is the same as the Defendant who served a fresh notice on the Plaintiffs to quit, then it is such action of the Defendant that led to a fresh case being filed.

On the other hand, the Plaintiffs on being served with a fresh Notice to vacate which they clearly understood was in contempt and/or violation of the injunction orders existing between the parties under HCCC No. 266 of 2011, why did they not proceed to stop the violation by invoking the said injunction orders instead of rushing to court to file a fresh suit and application for injunction?

As things stand presently, however both suits exist. Proper and full arguments are necessary to help the court decide whether the rule as Res Subjudice applies in order to strike out the latter suit or stay it or consolidate it with the earlier suit for the purpose of resolving all the issues which arise from their existence.

Both parties at one stage or other as it suited them, argued or acted as if the Defendant in the two suits was or was not the same. That issue will properly be addressed during the proper hearing of the suits jointly or separately. In those stages either party acted contrary to the Res rule. If I were presently to rule that this suit is Res subjudice and strike it out, the parties are in my view still fully bound by the injunction orders under HCCC No. 266 of 2011.

This court will take the position that in serving a fresh notice to vacate the premises the Defendant regarded itself as a different entity from the Defendant in the earlier suit. On that basis the court accepts that the Plaintiffs were entitled to file a suit and this application to protect their interests. Since the defendant is not opposing the application on any other ground and the court thinks the plaintiffs on that basis have a prima facie case and will suffer irreparable loss which cannot easily be compensated in damages and the balance of convenience being in their favour, then I find no good reason not to grant the injunction sought.

The result is that the application is allowed as prayed with costs in the cause on condition however, that the two suits be consolidated and be prosecuted within 9 months in default of which the injunction orders herein and in the other suit shall automatically stand lifted and discharged. Orders accordingly.

Dated and delivered at Nairobi this 11<sup>th</sup> day of February, 2014.

.....

**D A ONYANCHA**

**JUDGE**