



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL CASE NO 506 OF 2010**

**HEDGEHOG COMPANY LIMITED.....PLAINTIFF**

**V E R S U S**

**MUTANA HOLDINGS LIMITED & ANOTHER.....DEFENDANTS**

**R U L I N G**

1. In this application by **notice of motion dated 31<sup>st</sup> January, 2014** the 1<sup>st</sup> Defendant seeks the main order that the *ex parte* order given in this suit on 29<sup>th</sup> October, 2010 (Mwera, J) be set aside or discharged. By that order the Defendants were restrained from in any way interfering with the Plaintiff's occupation of the suit premises, being Room Number 17, Vision Plaza 4<sup>th</sup> Floor. In particular the Defendants were restrained from levying distress against the Plaintiff pending hearing and disposal of the application upon which that interim order was granted. That application was chamber summons dated 29<sup>th</sup> October, 2010 which was filed together with the plaint. The application has never been heard *inter partes*. Although the Court directed that the Defendant be served when it granted the interim injunction, the 1<sup>st</sup> Defendant states that they have never been served with the application, nor indeed summons to enter appearance and copy of the plaint. Although the order granted by the Court was interim, the formal order as drawn is final, granting temporary injunction pending hearing of the suit.

2. The Plaintiff did not file any papers in response to the application despite service upon it. Nor was there appearance for it at the hearing of the application. The application was therefore canvassed *ex parte*.

3. In presenting the application, learned counsel for the 1<sup>st</sup> Defendant pointed out that under **Order 40, rule 4(2)** of the **Civil Procedure Rules** the *ex parte* injunction should have been valid for only 14 days; and that under rule 4(4) of the same Order the application should have been heard within 60 days from the date of filing unless the Court for good reason extended the time. As already seen the application has never been prosecuted.

4. It is apparent that the Plaintiff came to Court only for purposes of securing the interim injunction. It has not bothered to prosecute the application upon which the interim injunction was granted. It has not even bothered to serve necessary process in the suit, that is, summons to enter appearance and copy of the plaint. Finally, it would not even be bothered to answer the present application.

5. I have no hesitation at all in granting the application by notice of motion dated 31<sup>st</sup> January, 2014. The interim injunction granted *ex parte* on 29<sup>th</sup> October, 2010 is hereby vacated. The 1<sup>st</sup> Defendant shall have costs of the application. Those will be the orders of the Court.

**DATED AND SIGNED AT NAIROBI THIS 9<sup>th</sup> DAY OF JULY 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 11<sup>TH</sup> DAY OF JULY 2014**