



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ENVIRONMENTAL AND LAND DIVISION**  
**ELC CIVIL MISC. NO. 1549 OF 2013**

**SULEIMAN MURUNGA.....PLAINTIFF**

**VERSUS**

**NILESTAR HOLDINGS LIMITED.....1<sup>ST</sup> DEFENDANT**

**GREEN VALLEY LIMITED .....2<sup>ND</sup> DEFENDANT**

**RULING**

The Plaintiff by a Notice of Motion application dated 24<sup>th</sup> December 2013 expressed to be brought under Order 40 Rules 1 and 2(1) of the Civil Procedure Rules 2010, sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act seeks interalia the following orders-

1. That pending the hearing and determination of this suit, the Defendants by themselves or through their servants, agents or assigns be restrained from levying distress on the goods of the plaintiff/Applicant and from trespassing upon or evicting the plaintiff/Applicant from the property known as **L.R.NO.209/918, Simmers Restaurant Kenyatta Avenue, Nairobi** or in anyway interfering with the said property or the plaintiff's occupation thereof.
2. That the costs of the application be provided for.

The plaintiff/Applicant premises his application firstly, on the grounds set out on the body of his application and, secondly on the grounds contained in the affidavit in support sworn by **Suleiman Murunga** the Applicant dated 24<sup>th</sup> December 2013. The plaintiff/Applicant sets out the following grounds in support of his application on the face of the application:-

- a. The applicant was hitherto a tenant of the 1<sup>st</sup> Defendant/Respondent in the property known as **L.R. NO.209/918** Kenyatta Avenue, Nairobi where the Applicant is carrying on a very lucrative bar and restaurant business known as Simmers Restaurant employing over 67 staff.
- b. The 1<sup>st</sup> Defendant/Respondent's 99 years leasehold term with the Government expired on or about 31<sup>st</sup> December 2009 and the same was not renewed or extended by the Commissioner of Lands despite application by the 1<sup>st</sup> Defendant/Respondent.
- c. The landlord/tenancy relationship between the plaintiff/Applicant and the 1<sup>st</sup>

- Defendant/Respondent effectively expired on or about 31<sup>st</sup> December 2009 when the latter's interest in the suit property determined.
- d. The plaintiff/Applicant applied for and was allocated the suit property by the Commissioner of land pursuant to a letter of Allotment Reference Number 2333/91 dated 3<sup>rd</sup> November, 2011.
  - e. The Plaintiff/Applicant accepted the said allotment, paid the requisite stand premium and other charges amounting to Kshs.2,369,200/- and complied with all the conditions contained in the letter of Allotment thereby entitling him to the legal and beneficial ownership of the suit property pending processing and issuance of the Title (Grant).
  - f. The plaintiff/Applicant accordingly stopped paying rent and the 1<sup>st</sup> Defendant has not thereafter demanded for the payment of the same.
  - g. On or about 17<sup>th</sup> December 2013 the Defendants/Respondents proclaimed the plaintiff's moveable goods in purported levy of distress to recover the sum of Kshs.1,620,000/- in alleged arrears of rent.
  - h. No prior demand for rent or notice was issued by the Defendants to the plaintiff prior to the said action.
  - i. The purported distress is unlawful, null and void for the reasons that:-

(a) no landlord/tenant relationship subsists between the Plaintiff and any of the Defendants.

(b) the Government leasehold term previously held by the 1<sup>st</sup> Defendant over the suit property expired by effluxion of time on 31<sup>st</sup> December 2009 and was not renewed.

(c) the 1<sup>st</sup> Defendant is no longer the legal or registered owner of the suit property.

- j. The plaintiff/Applicant is apprehensive that the purported distress is in fact an attempt to evict him from the suit premises.
- k. Unless restrained by an order of injunction, the Defendants will carry out their illegal action that will result in the Plaintiff/Applicant suffering irreparable loss and damage.

The Plaintiff/Applicant in his sworn affidavit in support of the application reiterates the grounds set out on the body of the application. The Plaintiff deposes that the suit premises have been the subject of a dispute between the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant over the ownership of the suit premises but the plaintiff avers he was not a party to the dispute. The Plaintiff deposes that it was within his knowledge that the 99 year Government lease that the 1<sup>st</sup> Defendant had over the suit premises expired on or about 31<sup>st</sup> December 2009 and that the Government had not renewed the same although the 1<sup>st</sup> Defendant had applied for its renewal.

The plaintiff states he applied for the grant of the suit premises and that the Commissioner of Lands vide a letter dated 3<sup>rd</sup> November, 2011 allotted the plaintiff the suit property on the terms and conditions set out in the said letter of allotment annexed and marked "SM2". The Plaintiff further states that he by a letter dated 8<sup>th</sup> November, 2011 accepted the terms of allotment and paid the sum of Kshs.2,369,200/- on account of stand premium and the other related charges. The letter of acceptance and the RTGS payment slip and the official receipt are annexed and marked "SM3". The Plaintiff avers that he is now awaiting the processing and issuance of the Title (**Grant**) to the suit property having been resurveyed. The plaintiff in the premises contends having been allocated the suit property and having complied with the terms of the allotment he is the beneficial owner of the property and that the 1<sup>st</sup> Defendant's interest in the property determined on or about 31<sup>st</sup> December 2009 when the lease expired and consequently the tenancy relationship with the 1<sup>st</sup> Defendant automatically terminated by operation of the law. It is the plaintiff's contention therefore that the 1<sup>st</sup> Defendant would have no basis to continue demanding rent from the plaintiff when no landlord tenancy relationship between them exists.

Both the 1<sup>st</sup> defendant and the 2<sup>nd</sup> Defendant have filed separate replying affidavits in opposition to the plaintiff's application. One **Jamilleh Ebrahim**, a shareholder and director of the 1<sup>st</sup> Defendant swore a

replying affidavit on behalf of the 1<sup>st</sup> Defendant dated 16/1/2014 where he depones that the plaintiffs application is brought in bad faith to avoid paying the amount owing jointly to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The 1<sup>st</sup> Defendant vide paragraphs 5 and 6 of replying affidavit depones:-

**5. That on 29<sup>th</sup> June 2010 the 2<sup>nd</sup> Respondent obtained ex-parte orders in HCCC NO. 439 of 2004 to collect rent from the suit premises and the orders were confirmed by Justice Muga Apondi on 24<sup>th</sup> November 2010.**

**6. That the 1<sup>st</sup> Respondent was until 31<sup>st</sup> December 2009 the beneficial and registered owner of L.R.209/918 (the suit premises and which was in dispute in the aforesaid court case) a leasehold granted by the Government for a period of 99 years. The lease expired on the said date.**

The 1<sup>st</sup> Defendant states that prior to the expiry of the lease on 31/12/2009 its Advocates vide a letter dated 28/10/2009 annexed and marked "JEI" applied for a renewal of the lease for a further term of 99 years. The 1<sup>st</sup> Defendant states that at the time the plaintiff was issued with the purported letter of allocation, the 1<sup>st</sup> Defendant's application for renewal of the lease was still pending and that the office of the Commissioner of Lands by a letter dated 31<sup>st</sup> October 2011 annexed and marked "JE7" with other letters, was still requesting the 1<sup>st</sup> Defendant to furnish particulars ostensibly to enable them determine the application. The 1<sup>st</sup> Defendant further avers that the allotment to the plaintiff was made when the orders issued by **Hon. Justice Muga Apondi** on 24/11/2010 were in force yet apart of the order prohibited all further leasing, allotment, subleasing, user, occupation or possession. The allotment to the plaintiff thus in view of the existing court was illegal and null and void and cannot form the basis of any suit seeking injunctive orders.

The 1<sup>st</sup> Defendant further avers that the plaintiff had vide a ruling of the court of Appeal made on 3<sup>rd</sup> February 2012 in **Civil App. NO. Nairobi 17 of 2011** been directed to be depositing the rentals from the suit premises in an interest earning account in the joint names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants Advocates. The 1<sup>st</sup> Defendant in the circumstances states that the Applicant wants to circumvent existing valid orders for him to pay rent to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and thus the Applicants application is an abuse of the process of the court and the same ought to be dismissed.

The 2<sup>nd</sup> Defendant like the 1<sup>st</sup> Defendant opposes the Applicant's application and has sworn a replying affidavit through one **Margaret Wairimu Magugu** a director of the 2<sup>nd</sup> Defendant dated 30<sup>th</sup> January 2014. The gist of the 2<sup>nd</sup> Defendant's objection to the Applicants application is captured under paragraph 4 of the 2<sup>nd</sup> Defendant's replying affidavit which states:-

**4. That the Applicant's application is bad in law, incompetent an abuse of the Honourable court's process and contains material non disclosures by the applicant while obtaining the Exparte injunction and the same ought to be vacated and/or set aside.**

The 2<sup>nd</sup> Defendant avers that the Applicant was always aware of the suit **HCCC NO. 439 of 2004** between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as the Applicant together with the other two tenants namely **Turbo sound Ltd** and **Universal Gift Centre** had applied to be enjoined as parties in the said suit but which application was not granted. The 2<sup>nd</sup> Defendant further avers that the applicant had on several months between June 2010 and April 2013 paid rent to the Respondent's joint account which dispels the averment by the applicant that he had no tenancy relationship with the Respondents. The 2<sup>nd</sup> Defendant further avers that Hon. Justice **Muga Apondi** on 24<sup>th</sup> October 2010 issued an order in **HCCC NO. 439 OF 2004** interlia on the following terms:-

**"That during the pendency of this suit, all further registration in ownership, leasing, subleasing, allotment, user occupation or possession or in any kind of right title and interest on L.R. 209/908 and L.R.209/98 situated along Kenyatta Avenue, Nairobi be and is hereby prohibited in any Land**

**registry, and all other registering authorities”.**

Copy of the order is annexed and marked “**MWM2**” in the 2<sup>nd</sup> Defendants replying affidavit. The 2<sup>nd</sup> Defendant’s replying affidavit avers that the applicant was served with the order and that the Applicant continued to pay the rent to the 2<sup>nd</sup> Defendant until 3<sup>rd</sup> February 2012 when the court of Appeal vide Civil Application **NO. NAI. 17/2011** directed that all the rent from all the tenants including the applicant be paid to a joint account of the Advocates of the respondents.

The 2<sup>nd</sup> Defendant further avers that the Applicant has previously filed two Business premises Rent Tribunal cases namely **BPRT NO. 51 OF 2011** and **BPRT NO. 614 of 2012** where he admitted he was a protected Tenant of the Respondents and that though in **BPRT NO. 614 of 2012** the Applicant claimed the Landlord/Tenant relationship had ceased since he had become the legal owner of the suit premises the claim was dismissed and the applicant ordered to pay rent which the Applicant paid until April 2013. The 2<sup>nd</sup> Defendant asserts that the Applicant did not adduce any evidence before the Tribunal to show that he had become the legal owner of the premises.

The 2<sup>nd</sup> Defendant avers that the 1<sup>st</sup> Defendant’s application for extension of the lease of the suit premises is under process and various agencies have given their approval and further avers that the applicant has not shown that he obtained approval from the Nairobi City Council, the Director of Surveys and the Director of Physical Planning before the purported allotment was made to him.

The 2<sup>nd</sup> Defendant contends that the Applicant concealed relevant facts and thus misled the court to grant the *ex parte* interim orders now in force and the court in the premises ought to have the orders varied vacated and/or set aside. The Respondents state that the Applicant has not paid any rent from April 2013 and aver that they were entitled to levy distress to recover rent arrears in the sum of Kshs.1,800,000/- being on account of rent for 10 months at the monthly rent of Kshs.180,000/-.

The Applicant filed a supplementary affidavit dated 28<sup>th</sup> January 2014 in response to the replying affidavits by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The Applicant in the supplementary affidavit refutes the Respondents allegations that he concealed any material facts from the court at the *ex parte* stage and asserts that he was a tenant of the 1<sup>st</sup> Respondent but that relationship ceased upon the expiry of the 1<sup>st</sup> Respondents lease term on or about 31<sup>st</sup> December 2009. The Applicant asserts that the cases that he had filed before the Business Premises Rent Tribunal relating to the tenancy became spent once the tenancy relationship ceased following the expiry of the Respondents lease and the allocation of the suit property to the Applicant.

As regards **HCCC NO. 439 of 2004** the Applicant states that he was not a party to the suit and that the order issued by **Hon. Justice Muga Apondi** on 24<sup>th</sup> November 2010 was never served upon him. The Applicant argues that it is a cardinal rule that for a party to be bound by a court order such party must be personally served with the order and there has to be evidence of such service. The Applicant avers that having not been personally served with the court order in **HCCC 439 of 2004** issued by **Hon. Justice Muga Apondi** he cannot be bound by the order. At any rate the Applicant contends that the order by **Hon. Justice Muga Apondi** was issued by the court in ignorance of the fact that the 1<sup>st</sup> Respondent had ceased to have any interest in the suit property following the expiry of its lease on or about 31<sup>st</sup> December 2009. The Applicant further avers that the 1<sup>st</sup> Defendant has not shown that the expired lease was extended before expiry so that the Respondents would continue to have any recognizable interest in the suit property.

The parties filed written submissions through which they highlighted their respective positions as borne out by the facts outlined in their affidavits and the annexures thereto. The plaintiff through his submissions asserts that he has satisfied the conditions for the grant of an interlocutory injunction as set out in the case of **GIELLA – VS- CASSMAN BROWN & COMPANY LTD (1973) EA 358**.

In the **Giella case (Supra)** the court established the principles for the grant of an interlocutory injunction

thus:-

- a. An applicant has to show a prima facie case with a probability of success,
- b. An applicant has to demonstrate that damages would not be an adequate remedy and the applicant might suffer irreparable damage unless the injunction is granted.
- c. In case the court is in doubt, the application may be decided on balance of convenience.

The plaintiff submits that the 1<sup>st</sup> Defendant's leasehold interest in the suit property expired by effluxion of time on or about 31<sup>st</sup> December 2009 and henceforth the 1<sup>st</sup> Defendant/Respondent ceased to have any interest in the suit property as no lease extension was granted to the 1<sup>st</sup> Defendant. The plaintiff on the other hand has shown that he was vide the letter of 3<sup>rd</sup> November, 2011 from the commissioner offered an allotment of the suit property which he accepted and paid all the necessary dues and thereby became entitled to the beneficial ownership of the suit property as such allottee. The letter of allotment to the plaintiff has not been revoked and/or cancelled and thus the same remains legally valid. In my view once the 1<sup>st</sup> Defendant's lease term expired on 31<sup>st</sup> December 2009 it ceased to be the owner of the suit property which reverted to the Government. The Government henceforth became entitled to allocate the property to any other person.

The 1<sup>st</sup> Respondent in their submissions maintain that the Applicant has always been a controlled tenant in the suit premises and that tenancy has never been terminated in accordance with the law. The 1<sup>st</sup> Defendant further submits its application for extension of lease has not been rejected as alleged by the Applicant as the same is still under process. The 1<sup>st</sup> Respondent contends the allocation of the suit property was irregular as the 1<sup>st</sup> Respondent's application for lease extension has never been formally rejected by the Commissioner of Lands. The 1<sup>st</sup> Respondent submits that as the holder of the leasehold interest that expired on 31<sup>st</sup> December 2009 they had a pre-emptive right to have the lease renewed in their favour and cite section 13 (1) of the Land Act NO. 6 of 2012 to fortify their submission.

Section 13 (1) Land Act provides:-

**“Where any land reverts back to the National or County Government after expiry of the leasehold tenure the Commission shall offer the immediate past holder of the leasehold interest pre-emptive rights to allocation of the land provided such lessee is a Kenyan Citizen and that the land is not required by the national or the county Government for public purposes”.**

The 1<sup>st</sup> Respondent maintains they are still the beneficial owners of the suit property as they continue to pay the ground rent and land rates. That by virtue of the subsisting court order any further leasing, allotment and subleasing was prohibited and therefore the applicant could not have been lawfully allocated the suit property. The Commissioner of Lands was not a party in the High Court case between the Defendants and it has not been demonstrated that the Commissioner of Lands was served with the order issued in **HCCC NO. 439 of 2009** and/or that the order was registered against the title of the suit property.

The 1<sup>st</sup> Defendant/Respondent submits as the beneficial owners of the suit premises they are entitled to rent and as the Applicant was in rental arrears the levy of distress was lawful. The Respondents reiterate the plaintiff has not satisfied the conditions for the grant of injunction as laid out in the **Giella vs-Cassman Brown** case (**Supra**) to be entitled to an order of injunction.

The 2<sup>nd</sup> Defendant/Respondent submissions like those of the plaintiff and the 1<sup>st</sup> Defendant/Respondent recap the facts of the case. The thrust of the submissions being that the plaintiff/Applicant failed to make full disclosure of material facts to wit- the existence of the order issued by the **Hon. Justice Muga Apondi in HCCC NO.439 of 2004** and the other BPRT matters where the plaintiff/Applicant was ordered to continue remitting the rents to the Respondents. The 2<sup>nd</sup> Defendant/Respondent argues that the failure to make full disclosure rendered the granting of the ex parte order of injunction liable to be set aside and/or vacated once the material facts were disclosed to the court. The 2<sup>nd</sup> Defendant referred the

court to the cases of **FLUID & POWER SYSTEMS LTD –VS – KALSI (1991) KLR 584** where **Bosire** held thus-

**“A party who comes to court and obtains ex-parte orders either on the basis of a false affidavit or having with held from the court certain material facts disentitles himself to the orders sought”.**

The 2<sup>nd</sup> defendant referred the court to the case of **Grace Wanja –vs- Justus Marete (2006) eKLR** where **Hon. Justice Sitati** held:-

**“the relief that the applicant seeks is an equitable relief and it was incumbent upon her to make full disclosure of all the facts material to the application which are known to her”.**

The 2<sup>nd</sup> Defendant/Respondent contended that there was non disclosure by the plaintiff which should disentitle the plaintiff to the order of injunction that he seeks. Indeed the 2<sup>nd</sup> Defendant/Respondent avers that the plaintiff is in contempt of the High Court order and the court of Appeal order requiring the plaintiff to deposit rent in a joint account operated by the Advocates of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. I have reviewed and considered the assertions by the Respondents that the plaintiff failed to make disclosure of the existence of the various court orders and my position is that the existence of the said court orders having regard to the facts and circumstances of this matter did not have a bearing on the issues for determination in this matter.

I have considered the material placed before the court by the parties including the parties submissions and the issue for determination is whether the plaintiff has demonstrated he has a prima facie case with a probability of success as against the Defendants. There is no dispute that the 1<sup>st</sup> Defendant/Respondent was registered owner of a leasehold interest for a term of 99 years over the suit property. It is also not in dispute that the term of 99 years expired on 31<sup>st</sup> December 2009 and that as at the time the lease term expired the term of the lease had not been renewed and/or extended in favour of the 1<sup>st</sup> Defendant. The leasehold term in favour of the 1<sup>st</sup> Defendant was for a fixed term of 99 years which was to expire on 31<sup>st</sup> December 2009.

Under section 111 of the Transfer of Property Act (now repealed) a lease of immovable property determines:-

**a. By efflux of the time limited thereby.**

On expiry of the period fixed for the lease the lease lapses because of effluxion of the term such that the lease automatically comes to an end at the expiration of the agreed period. Thus the lease in favour of the 1<sup>st</sup> Defendant came to an end on 31<sup>st</sup> December 2009 and the radical title of the suit property reverted to the state. Upon expiry of the lease the Government can extend and/or renew the lease in favour of the previous holder or it can decline to do so and allocate the property to any other person.

On the basis of the material placed before the court by the 1<sup>st</sup> Defendant there is no evidence that the Government renewed and/or extended the lease in favour of the 1<sup>st</sup> Defendant before it expired. Indeed following the expiry of the lease hold term there is no lease to extend and/or renew as in my view the extension or renewal can only be had before the expiry of the term. After the expiry there is nothing to extend and/or renew and the Government can only allocate the property afresh. In my view the 1<sup>st</sup> Defendant left it too late in seeking an extension of lease as the 1<sup>st</sup> Defendant sought extension the lease just two (2) months before the lease had expired as evidenced by the documents and correspondence annexed and marked as “**JEI-JE5**” to the 1<sup>st</sup> Defendant’s affidavit. The letter seeking extension/renewal of the lease was written by the 1<sup>st</sup> Defendant’s Advocates on 28<sup>th</sup> October 2009 barely 2 months before the lease expired. The fact however remains that as at 31<sup>st</sup> October 2009 when the lease expired the Commissioner of Lands had not accorded any approval to the application for extension and/or renewal of the lease to the 1<sup>st</sup> Defendant. The 1<sup>st</sup> Defendant argues their application was under consideration and

processing at the time the plaintiff obtained his letter of allotment of the suit property dated 3<sup>rd</sup> November 2011 and contends the issue of the letter of offer of allotment to the plaintiff was irregular. The fact however remains that after 31<sup>st</sup> December 2009 the lease over the suit property held by the 1<sup>st</sup> Defendant terminated on expiry of the lease term.

While there may be issues and questions to be raised on the manner the plaintiff got the letter of allotment in respect of the suit premises from the Commissioner of Lands on 3<sup>rd</sup> November 2011 the fact remains that at the time the allotment letter was made to the plaintiff no approval of lease extension or renewal of lease had been made to the 1<sup>st</sup> Defendant and thus there was nothing to prevent the Commissioner of Lands from making the allotment. The property had reverted to the Government by operation of the law following the expiry of the 1<sup>st</sup> Defendant's lease term. Prior to the enactment of the new Land Act NO. 6 of 2012 there was no clear provision in the law as to the process and procedure to be adopted in the renewal and/or extension of leases that had expired and/or were about to expire and thus section 13(1) of the Land Act would have no application to leases that had expired before it came into force.

The Defendants argument that the allotment to the plaintiff was irregular, unlawful and illegal because it was made during the subsistence of a court order issued in **HCCC NO. 439 of 2004** and the court of Appeal order made on 3<sup>rd</sup> February 2012 raises fundamental issues of law. Firstly, whether the orders were appropriately served on the plaintiff so that the plaintiff could be bound by the orders considering that the plaintiff was not a party to these suits. Secondly, there is the question whether the Commissioner of Lands had any notice of the court order and/or whether the orders had been registered against the title to the suit property to prevent the dealings with the property that the order sought to prohibit. Thirdly, there is the issue whether the 1<sup>st</sup> Defendant had any proprietary interest in the suit property at the time the orders were issued considering that the 1<sup>st</sup> Defendant's interest had lapsed with the expiry of the lease. These indeed are not issues that the court can definitively adjudicate upon at this interlocutory stage of the proceedings. In these proceedings and at this interlocutory stage the court cannot properly make a finding as to whether the letter of allotment issued to the plaintiff was irregular and/or illegal as that would require the taking of evidence at the trial where parties would call oral evidence and witnesses would be subjected to cross-examination.

The plaintiff has however demonstrated that he was on 3<sup>rd</sup> November 2011 issued an allotment in respect of the suit premises by the Commissioner of Lands following the expiry of the 1<sup>st</sup> Defendant's lease term. The Commissioner of Lands prior to the inauguration of the 2010 Constitution and the enactment of the new Land laws in 2012 was the person mandated to alienate Government land pursuant to section 3 of the Government Lands Act Cap 280 Laws of Kenya (**now repealed**). The letter of Allotment to the plaintiff dated 3<sup>rd</sup> November 2011 set out the conditions and terms of allotment which the plaintiff was required to accept and comply with. The letter of allotment offered the plaintiff a lease over **L.R. 209/918** Nairobi for a term of 99 years from 1<sup>st</sup> November 2011 at a stand premium of Kshs.2,100,000/- and an annual rent of Kshs.420,000/- The offer letter also set out other payments the allottee was required to make totalling in aggregate to Kshs.2,369,200/-. The letter of offer required that the written acceptance of the allotment and the terms and conditions thereof and payment be made within 30 days from the date of the offer otherwise the offer would lapse. The plaintiff made a written acceptance of the offer on 8/11/2011 and effected the payment of the dues of Kshs.2,369,200/- demanded to the Commissioner of Lands as per annexure "**SM3**".

My view is that by accepting the offer of the allotment and effecting the demanded payment the plaintiff acquired a proprietary interest on the suit property and that he became a beneficial owner of the property.

Thus as from 1<sup>st</sup> November 2011 the plaintiff by virtue of accepting the offer terms of the allotment and effecting the necessary payment he acquired the status of the beneficial owner of the suit premises and he in my view could not be expected to continue paying rent of the premises in respect of which he had become the beneficial owner following the allotment. Simply the Landlord/tenancy relationship that existed between the 1<sup>st</sup> Defendant and the plaintiff while the 1<sup>st</sup> Defendant's lease term was running terminated at any rate when the plaintiff was allocated the suit property by the Commissioner of Lands

thus becoming the beneficial owner of the property.

In the premises I would hold and find that the plaintiff has shown and demonstrated that he has a prima facie case with a probability of success. The letter of allotment issued to the plaintiff has not been cancelled and/or revoked by the Government and the same remains valid unless and until the same is otherwise legally annulled through a valid legal process. Having come to the conclusion that the plaintiff has a proprietary interest in the suit premises and that he is entitled to occupy the premises as a beneficial owner pursuant to the letter of allotment it is my finding that the Defendants are not entitled to demand rent from the plaintiff as their right to do so was taken away once the plaintiff became the legal allottee of the premises as from 1<sup>st</sup> November 2011. I therefore hold that the Defendants are not entitled to levy distress for rent from the property known as **L.R. NO.209/918, Simmers Restaurant, Kenyatta Avenue, Naiorbi.**

I accordingly find the plaintiff's Notice of Motion application dated 24<sup>th</sup> December 2013 to have merit and I grant an order of restraint in terms of prayer number (3) of the Notice of Motion. Having regard to the circumstances of this matter I direct that the costs of the application shall be in the cause.

**Ruling dated, signed and delivered this...14th.....day of...July.....2014.**

**J.M. MUTUNGI**

**JUDGE**

**In the presence of:**

.....for the Plaintiff

.....for the Defendants