



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND DIVISION**  
**ELC. CASE NO.465 OF 2014**

**VILLAS K. MUHINDI .....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**SARAH GATONYE.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**PETER MUTURI MUIGAI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**LITTLE VINEYARD AUCTIONEERS.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

Coming up before me for determination are two applications filed by the Plaintiffs/Applicants dated 14<sup>th</sup> April 2014 and 15<sup>th</sup> May 2014. Both Applications seek for orders of temporary injunction restraining the Defendants/Respondents from removing the Applicants' household goods, proceeding with distress for rent and interfering with their quiet possession of the suit property pending the hearing and determination of this Application and suit. The Plaintiffs/Applicants also sought for orders of mandatory injunction compelling the Respondents to return the household goods and to restore the water supply and security gate of the Plaintiffs/Applicants. The Plaintiffs/Applicants also seek for an order that the Defendants/Respondents be condemned to pay the costs of these Applications.

The Applications are supported by the grounds appearing on their face together with Supporting Affidavit of the Applicants sworn on 14<sup>th</sup> April 2014 in which they averred that they are tenants of the 1<sup>st</sup> Defendant/Respondent at Umoja Estate in Nairobi County where they pay monthly rents of Kshs. 4,000/- and 7,000/- respectively. They further averred that the 1<sup>st</sup> Respondent served them with a Notice of Increment of Rent dated 22<sup>nd</sup> November 2013 which was in contravention of a Rent Control Certificate issued by the Rent Restriction Tribunal. They further averred that despite their paying their rent on time and there being no rent arrears, the 1<sup>st</sup> Respondent instructed the 2<sup>nd</sup> Respondent to distrain for rent against them. The 1<sup>st</sup> Plaintiff, Villas K. Muhindi, filed her Supporting Affidavit dated 15<sup>th</sup> May 2014 whereby she averred that on 13<sup>th</sup> May 2014, the 2<sup>nd</sup> Respondent under instructions from the 1<sup>st</sup> Respondent in the presence of police officers and hired strangers, forcefully carted away her household goods from her residence in Umoja 1 estate Plot No. E/36 on account of distress for rent on the premise of a court order issued on 2<sup>nd</sup> May 2014 in Miscellaneous Civil Case No. 424 of 2014. She further stated

that on the same date, the Respondents unlawfully disconnected her water supply and removed her security gate thereby exposing her to intolerable and unsafe living conditions. She further averred that both she and the 2<sup>nd</sup> Plaintiff are apprehensive that the Respondents will proceed to advertise and dispose of their goods unless restrained by this court.

The Applications are contested. The 1<sup>st</sup> Respondent, Peter Muturi Muigai, filed his Replying Affidavits sworn on 22<sup>nd</sup> April 2014 and 29<sup>th</sup> May 2014 wherein he averred that the subject premises being residential in user and whose monthly rent exceeds Kshs. 2,500/- are outside the ambit of the Rent Restriction Tribunal. He further responded that the reason why the Rent Restriction Tribunal assessed the rent payable in the premises was to determine whether it had jurisdiction. He further averred that the rent payable in the suit property is controlled by market forces and no court has jurisdiction to fix the rent payable. He further averred that the Applicants have no written lease and that despite the rent having been increased with effect from 1<sup>st</sup> January 2014 to Kshs. 15000/- and Kshs. 8,000/-, the Plaintiffs insist on paying rent at Kshs. 4,000/- and Kshs. 7,000/-. He added that as a consequence of this, the Plaintiffs have fallen into rent arrears hence the reason why he instructed auctioneers to distress for rent. He further stated that upon being denied access to the suit property, he went to court and obtained orders to police escort to distraint for rent which were executed. He confirmed having distrained for rent against the 1<sup>st</sup> Plaintiff. He further added that the Plaintiffs have the option of vacating the premises should they find themselves unable to afford the rent demanded by the 1<sup>st</sup> Respondent.

The issue that I must determine is whether I should grant the Plaintiffs/Applicants the orders of temporary injunction and mandatory injunction which they seek. In deciding whether to grant the temporary injunction sought after by the Plaintiffs/Applicants, I wish to refer to and rely on the precedent set out in the case of **GIELLA versus CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

**“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”**

Have the Plaintiffs/Applicants made out a prima facie case with a probability of success? In the case of **MRAO versus FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

**“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”**

Have the Plaintiffs/Applicants demonstrated that they have a genuine and arguable case? It is conceded that the Plaintiffs/Applicants are tenants of the 1<sup>st</sup> Defendant/Respondent and that this dispute has arisen on account of the increment of rent for the suit property by the 1<sup>st</sup> Defendant/Respondent. That rental increase has been disputed by the Plaintiffs/Respondents who claim to be shielded from such increments by the Rent Restriction Tribunal. It is also conceded that it is this increase of rent that has given rise to the rent arrears being claimed by the 1<sup>st</sup> Defendant/Respondent and the reason why the 1<sup>st</sup> Defendant/Respondent has instructed the 2<sup>nd</sup> Defendant/Respondent to levy distress and to proclaim the household goods of the Plaintiffs/Respondents. The Plaintiffs/Applicants’ case is that they are shielded by the Rent Restriction Tribunal from the rent increase based on a Rent Control Certificate issued by that court purportedly indicating that court’s assessment on the rents payable. My review of the Rent Restriction Act, specifically section 2(1) states that the Act shall not apply to dwelling-houses which have a standard rent exceeding Kshs. 2,500/- per month. As the Plaintiffs/Applicants were already paying Kshs. 4,000/- and Kshs. 7,000/- before the rent increase, then this statute does not apply to them and the

Rent Control Certificate is of no assistance to them. This might explain why they abandoned their case in that Tribunal and proceeded to file this suit. On that account, I find that the Plaintiffs/Applicants have failed to establish a genuine and arguable case and by extension a prima facie case with high chances of success at the main trial. Since the Plaintiffs have failed to prove the first ground in the grounds set down in the celebrated case of **Giella versus Cassman Brown**, this Honourable Court need not venture into the other grounds. This position was upheld in the Court of Appeal case of **Kenya Commercial Finance Co. Ltd versus Afraha Education Society (2001) 1 EA 86** as follows:

**“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is ... sequential so that the second condition can only be addressed if the first one is satisfied...”**

Further to the above, the Plaintiffs/Applicants sought a mandatory injunction compelling the Defendants/Respondents to return the household goods they took and to restore the water supply and security gate. The leading authority on this issue is the case of **Locabail International versus Agro Export (1986) 1 ALLER 901** wherein it was stated at follows:

**“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and only in clear cases where the court thought that the matter ought to be decided at once, or where the injunction was directed at simple and summary act which could easily be remedied or where the Defendant had attempted to steal a match on the Plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a high sense of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”**

In this particular case and in light of my sentiments set out earlier as to why I have declined to grant a temporary injunction, I do not consider this a case in which a mandatory injunction may be rightly granted. Accordingly, I decline to grant the sought after mandatory injunction.

In light of the foregoing, I hereby dismiss this Application with costs to the Defendants/Respondents.

**DELIVERED AND SIGNED IN NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER 2014.**

**MARY M. GITUMBI**

**JUDGE**