



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 788 of 2012**

**BAKARI MOHAMED ABDULREHMAN.....APPLICANT**

**VERSUS**

**SADIK MUCHIKU IMAANA.....RESPONDENT**

**RULING**

The Applicant filed a Notice of Motion application dated 30/10/2012 seeking the following orders:

1. Spent
2. Spent
3. The Honorable Court be pleased to issue a permanent injunction directed to the defendant to give vacant possession of the two shops erected on premises known as L.R. No. 36/11/1027, 10<sup>th</sup> Street, Eastleigh Section 11.
4. The Officer Commanding Pangani Police Station be ordered by this Honorable Court to enforce the orders sought herein
5. Costs of the application be in the cause.

The application is premised on the grounds that the Applicant is the absolute and indefeasible owner of shops erected on premises known as L.R. No. 36/11/1027, 10<sup>th</sup> Street, Eastleigh Section 11. The Respondent has illegally entered into the Applicant's shop on the stated address as the term of the lease expired on 1/11/2009.

The application is supported by an affidavit sworn on 30/10/2012 by the Applicant. He deposes that the Respondent and himself entered into a lease agreement for a term of two years as his intention was to create an uncontrolled tenancy. It was mutually agreed that Respondent was to occupy the shops for a monthly rent of Kshs. 12,000/-. It is the Applicant's disposition that he intends to repair and do renovations to the shops but he is hindered by the continued occupation by the Respondent. Thus it is only fair, just and expedient that the Respondent be ordered to vacate the said two shops.

In support of his application, the Applicant annexed a copy of a Tenancy Agreement executed on 1/11/2007 in the presence of an Advocate. It is a term of the agreement that the duration of the tenancy shall be two years from 1/11/2007 subject to renewal or termination as provided for in the agreement. The Applicant also annexed a copy of a demand letter dated 29/2/2012 issuing the Respondent a one month's notice from 1/3/2012 to 1/4/2012 to vacate and/or surrender vacant possession of the premises to the

Applicant.

Despite the Respondent having been served with the hearing notice of this application, the Respondent has failed to enter appearance and/or file a response thereto. The application thus proceeded *ex-parte* on 16/1/2013 when the same came up for hearing. The applicant reiterated the contents of his application and prayed that the Court does grant prayers 3 and 4 of his application.

Prayer 3 of the application is mandatory and in their nature they are final. The Applicant desirous of the Respondent to give vacant possession of the shops as described hereinabove. The test whether to grant a mandatory injunction or not is correctly stated in **Vol.24 Halbury's Laws of England 4<sup>th</sup> Edition Para.918 which reads;**

*“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, **if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff....a mandatory injunction will be granted on an interlocutory application.**”*

The Applicant furnished this Court with a tenancy agreement which specified the term of the tenancy. He also furnished a demand letter issuing the Respondent a month's notice to vacate and by filing this suit, it appears that the Respondent has become adamant. The fact that there is no response from the Respondent despite being served of the application is a clear indication that he is stubborn.

I am of the view that this is a clear case which ought to be decided at once. In the circumstances, I allow the Applicant application in terms of prayers 3 and 4. Cost of this application shall be in the cause.

Dated, signed and delivered this 8<sup>th</sup> day of April 2013

**L.N. GACHERU**  
**JUDGE**

In the Presence of:-

.....For the Applicant

.....For the Respondent

.....Court Clerk