



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL CASE NO. 247 OF 2013**

**GLORY DRIVING SCHOOL .....PLAINTIFF**

**VERSUS**

**PHONEART SOLUTIONS LTD.....DEFENDANT**

**+RULING ON INTERIM RELIEF**

1. In this suit the Plaintiff seeks to hold the Defendant to its agreement to give the Plaintiff a **lease of 5 years and one month** for **Shop No. 2** in the building commonly known as **Diamond Building** standing on **L.R. No. 209/895**. It is the Plaintiff's case that pursuant to the said agreement the Plaintiff took possession of the premises from the outgoing tenant who happened to be the Plaintiff's sister company, renovated the premises and took out trading licenses upon the premises.

It is the Plaintiff's further case that at the Defendant's request it even executed a formal lease prepared by the Defendant's own advocates, which formal lease the Defendant subsequently refused to execute claiming that it had withdrawn the offer of the lease.

2. Together with the plaint the Plaintiff filed **notice of motion dated 12<sup>th</sup> June 2013** seeking a temporary injunction to protect it from eviction pending disposal of the suit. The application was placed before me on 14<sup>th</sup> June 2013 under certificate of urgency and I directed that the same be served for mention *inter partes* on 20<sup>th</sup> June 2013.

3. On 20<sup>th</sup> June 2013 both parties were represented by counsel. The Defendant's learned counsel sought some time to put in papers and the matter was stood over to 28<sup>th</sup> June 2013 for further mention. On that date I did not sit and the parties appeared before Ougo, J and the learned Judge placed the matter for mention before me on 1<sup>st</sup> July 2013.

4. On 1<sup>st</sup> July 2013 the issue of interim relief was canvassed before me. I have considered the submissions of the learned counsels. I have also read the Defendant's replying affidavit filed on 28<sup>th</sup> June 2013. It is deponed at paragraph 6 thereof that the correspondences between the parties **"were mere written invitations to treat, and were never meant to be...an invitation to offer nor an offer, and therefore the Plaintiff cannot purport to enforce mere correspondences that do not meet the threshold required in law..."**

5. Apart from that averment there is really no answer to the specific issues of fact pleaded by the Plaintiff in the plaint and in the affidavit sworn in support of the application.

6. I have seen the various correspondences exchanged between the parties (both surface and e-mail) and the lease agreement which is signed by the Plaintiff. *Prima facie*, and without deciding the issues at this stage, the available material now before the court strongly points to the existence of an agreement between the parties upon which the Defendant's own counsels prepared a formal lease agreement upon instruction by the Defendant, which was forwarded to the Plaintiff for execution. The Plaintiff duly executed it and returned it to the Defendant for execution as required.

7. Again *prima facie*, the Plaintiff appears to have taken possession and occupation of the premises from the outgoing tenant and took out necessary trading licenses upon the premises. It is still in possession and occupation.

8. In the circumstances I hold that an interim injunction as sought in prayer 2 of the application will be in the interests of justice and I hereby grant the same. It will remain in place until the application is disposed of. Costs will be in the application. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF JULY 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 5<sup>TH</sup> DAY OF JULY 2013**