



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CIVIL SUIT NO. 242 OF 2017**

**JOHN MUTWIRI ARIMI T/A MUTWIRI**

**ARIMI & CO. ADVOCATES.....PLAINTIFF**

**VERSUS**

**MERU TEACHERS HOUSE LTD.....1<sup>ST</sup> DEFENDANT**

**THE CHAIRMAN BOARD OF DIRECTORS**

**MERU TEACHERS HOUSE LTD.....2<sup>ND</sup> DEFENDANT**

**DICKSON MUGAMBI.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Notice of Motion dated 2<sup>nd</sup> August, 2017 seeks the following orders:-

1) Spent.

2) That the Honorable Court be pleased to compel the respondent by way of order of mandatory injunction to reopen room No. 202 situated on Meru Municipality/152 and reinstate the applicant into occupation thereof forthwith pending the hearing and determination of this application.

3) That the Honorable Court be pleased to compel the respondents by way of order of mandatory injunction to reopen room No. 202 situated on Meru Municipality 152 and reinstate the applicant into occupation thereof forthwith pending the hearing and determination of the suit.

4) That the Honourable Court be pleased to restrain the respondents jointly and each of them, by themselves, employees, agents and/or servants by way of prohibitory injunction from leasing out or putting anybody else but the plaintiff/applicant into user and occupation of room 202 situated upon plot number Meru Municipality/152 pending the hearing and determination of this application.

5) That the Honorable Court be pleased to restrain the respondents jointly and each of them, by themselves, employees, agents and/or servants by way of prohibitory injunction from leasing out or putting anybody else but the plaintiff/application into user and occupation of room 202 situated upon plot number Meru Municipality/152 pending the hearing and determination of the suit.

6) That the Honourable Court be pleased to compel the respondents to return the applicant's rubber stamps and certificates pending the hearing and determination of this application.

7) That Costs of this application be in the cause.

8) That the Honorable Court be pleased to make such further orders it deems fit and expedient.

2. The application is based on the grounds:-

a) That on 2<sup>nd</sup> August, 2017 the 3<sup>rd</sup> defendant/respondent forcefully entered upon room 202 which was occupied by the applicant and threw out the property and the documents of the applicant.

b) That the room was demised for the purposes of practicing law.

c) That at the time of such uncalled for and high-handed action the respondent did not have any eviction orders from any court or tribunal.

d) That the 3<sup>rd</sup> defendant/respondent purportedly acted for and on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> defendant.

e) That the 3<sup>rd</sup> defendant was accompanied by goons and they wreaked havoc upon the office of the applicant.

f) That in the course of the chaos property was damaged and documents belonging to the plaintiff and his clients including some title documents got destroyed and or lost.

g) That the criminal action were reported at Meru Police Station vide OB No. 35/2/8/17 but action by the police is pending.

h) That some documents, telephone land line and internet server is still upon the office and there is a risk of the same being utilized by the respondents or their cohorts.

i) That at the time of such unlawful action the 3<sup>rd</sup> respondent used insulting language to the staff and clients of the plaintiff.

j) That unless the Plaintiff is put back into use and occupation his practice of law will collapse and damages would not be proper compensation.

k) That the closure of the office and unlawful eviction has caused a lot of inconvenience to the applicant and his clients.

l) That the applicant cannot discharge his duties to his clients and to the Court due to the unlawful action of the defendants/respondents.

m) That the actions of the respondent are unlawful and it is against public policy to follow any person to take the law into his/her hands.

3. The application was presented before me on 17.08.17 but I could not hear the same as there was no evidence of Service Directions were given for the matter to be heard on 23.8.17 interpartes. On this date, only applicant was present. Service had been effected by one David Mwenda Kanyamu as per his Return of Service filed in Court on 23.8.17.

This is a case whereby applicant has not availed to this Court information regarding his tenancy agreement. Order 3 rule (2) of the Civil Procedure Rules state that:-

***“All suits filed under order 3 rule 1 shall be accompanied by copies of documents to be relied at the trial including a demand letter”.***

This is a very crucial step that applicant has omitted. The Court does not know the terms under which applicant had occupied 1<sup>st</sup> defendants premises.

The prayers sought here in are for a mandatory injunction as applicant has been evicted. The Court also does not know the circumstances surrounding the eviction and the applicant has again not availed this information.

A mandatory injunction is indeed a remedy granted very sparingly. In the instant case However, I note that applicant is a legal practitioner and his tools of trade including rubber stamps and files belonging to clients were destroyed or got lost. For this reason I am inclined to give applicant some measure of reprieve.

I proceed to grant the following orders:-

- 1) A mandatory Injunction is hereby issued directing Respondents to reopen room 202 situated in Meru Municipality 152 and reinstate the applicant into occupation.
- 2) It is hereby ordered that the Respondents are to return the applicant’s rubber stamps and certificates and files.
- 3) The Injunctive orders granted herein are to remain in force for a period of six months only.
- 4) Applicant is to bear costs of the present application.

The injunctive orders are to remain in force for a period of six months only.

**SIGNED, DATED AND DELIVERED IN OPEN COURT AT MERU THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF:-**

C:A Janet

Applicant John Mutwiri present

**Hon. L.N MBUGUA**

**JUDGE**