



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**ENVIRONMENT AND LAND COURT**

**ELC. CASE NO. 20 OF 2010**

**HIGH PREFERENCE PROPERTIES LTD.....1<sup>ST</sup> PLAINTIFF**

**FLEXITANK SYSTEMS KENYA LTD.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**STEPHEN MAINA MUTURI..... DEFENDANT**

**RULING**

Coming up before me for determination is three applications as follows:

1. The Plaintiffs' Notice of Motion dated 17<sup>th</sup> March 2015 (hereinafter referred to as the "First Application") seeking an order of stay of execution of orders issued by this court on 13<sup>th</sup> March 2015 restraining the Defendant from evicting or interfering with the Plaintiffs' possession of two ground floor shops situate in the property known as Mepalux Plaza erected on Land Reference Number 209/11820 (the "suit property") pending the hearing and determination of an intended appeal;
2. The Defendant's Notice of Motion dated 31<sup>st</sup> March 2015 (hereinafter referred to as the "Second Application") in which the Defendant sought for an order of eviction of the Plaintiffs including their servants, agents and sub-tenants from the suit property, that the Officer Commanding Kamukunji Police Division be ordered to assist the Defendant to effect the eviction order and that the Plaintiffs be ordered to deposit the sum of Kshs. 600,000/- or such higher rent collected by them from exhibition stall traders on the suit property from 1<sup>st</sup> February 2015 pending the hearing and determination of this suit.
3. The Plaintiffs' Notice of Motion dated 21<sup>st</sup> April 2015 (hereinafter referred to as the "Third Application") seeking an order that pending the hearing of their application in the Court of Appeal in **Civil Application No. NAI 91 of 2015**, the status quo regarding the occupation of the suit property which is that the Plaintiffs are in occupation be maintained.

Of these three applications, two have been overtaken by events as rightfully pointed out by the Plaintiff's counsel, Mr. Mbabu. To start with, the Court of Appeal in **Civil Application No. NAI 91 of 2015** has already heard the Plaintiff's application for stay and dismissed it on 25<sup>th</sup> September 2015. This is to mean that the Third Application has been overtaken by events and is therefore hereby dismissed with costs to the Defendant. The Application filed by the Plaintiffs before the Court of Appeal in **Civil Application No. NAI 91 of 2015** sought the very same orders as they sought in the First Application. As stated earlier, the Application before the Court of Appeal was dismissed with costs. That being the position, the First Application cannot stand either as entertaining it would amount to appealing the decision arrived at by the Court of Appeal. I therefore proceed to dismiss the First Application with costs to the Defendant.

That essentially leaves only the Second Application for determination by this court. In the Second Application, the Defendant seeks for an order of eviction of the Plaintiffs including their servants, agents and sub-tenants from the suit property, that the Officer Commanding Kamukunji Police Division be

ordered to assist the Defendant to effect the eviction order and that the Plaintiffs be ordered to deposit the sum of Kshs. 600,000/- or such higher rent collected by them from exhibition stall traders on the suit property from 1<sup>st</sup> February 2015 pending the hearing and determination of this suit. The Second Application cannot stand either for the reason that the orders sought are final in nature and cannot be granted at this interlocutory stage of these proceedings. It is noteworthy that these are the same orders that the Defendant seeks in his Counterclaim dated 31<sup>st</sup> March 2015. The Defendant is guided to pursue the prosecution of his Counterclaim for the grant of the orders he seeks in the Second Application. For now, the Second Application is dismissed with no order as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER 2016.**

**MARY M. GITUMBI**

**JUDGE**