REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL APPEAL NO 3112 OF 1990

KENLEB CONS LIMITED…….…….…… PLAINTIFF

VERSUS

NEW GATITU SERVICE STATION LTD & ANOTHER….....……DEFENDANTS

RULING

By a Chamber Summons filed in court on 20th June, 1990, Kenleb Cons Limited, the plaintiff in the suit prays for, *inter alia*, an order directing the respondents, the defendants in the suit, to restore to it properties which were distrained for rent in premises at Gatitu Petrol Station, Thika. The premises are owned by New Gatitu Service Station, described in the plaint as a limited liability company.

In the application the applicant, a limited liability company, is described as the tenant of the 1st respondent / defendant. However no evidence was adduced to show exactly when the tenancy relationship was established and upon what terms. To succeed in an application for injunction an applicant must not only make a full and frank disclosure of all relevant facts to the just determination of the application, but must also show he has a right, legal or equitable, which requires protection by injunction. He must also satisfy the three tests set out in the often cited case of *Giella v Cassman Brown & Co Ltd*, 1973 EA 358; for the grant of an interlocutory injunction.

The applicant has not shown it has a right over the suit premises. The evidence before me shows that one of its directors, Njoroge Nguyai, had for long been the tenant in the premises, with the 1st respondent as the landlord. There have been previous civil proceedings between the former and the latter respecting the suit property. The respondents contend that one of the suits is High Court Civil Appeal No 240 of 1984. It is their case that the distress which is being challenged here was ordered in that appeal. They exhibited an extracted version of an order which was made on 2nd October, 1986. In that order the court authorised the 1st respondent to levy distress for rent against Njoroge H. Nguyaya alias Njoroge Nguyai. That order has not been set aside nor was it appealed against.

On the evidence before me, it is not clear when Njoroge Nguyai's tenancy determinated. Nor has it stated when exactly that applicant moved into the premises. The applicant is a limited liability company with Njoroge Nguyai and his wife Zipporah Njoki Nguyai, as the only shareholders and directors. In absence of evidence to show that the applicant has any rights over the property in dispute I am not satisfied that an injunction should be issued as prayed. It is not enough to allege that the applicant is a tenant without adducing evidence to show how and when the relationship came about. I apprehend the applicant is withholding certain facts essential in the just determination of this application. I consequently decline to grant the injunction prayed for. I dismiss the application with costs assessed at Kshs 800/= . Order accordingly.

Dated and Delivered at Nairobi this 31st Day of July, 1990

S.E.O. BOSIRE

……..

JUDGE