



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT MALINDI

MISC. CIVIL APPLICATION CASE NO. 27 OF 2018

CELESTINE NZIOKI.....APPLICANT

VERSUS

LUCY NTINYARIRESPONDENT

RULING

1. On 21st November, 2018 the Applicant, Celestine Nzioki, filed a Notice of Motion pursuant to Section 2 of the Distress for Rent Act, Cap. 293, Rule 9 of the Auctioneers Rules, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Section 3A of the Civil Procedure Act in which she prays for orders as follows:-

“a) That the application herein be certified urgent and service thereof be dispensed with at the first instance.

b) That Celestine Nzioki, is the legal owner authorized to get police escort from the OCS, Watamu Police Station to execute the distress for the rent against the Respondent in the Respondent’s premises on instructions issued in respect to distress rental house in Watamu.

c) That vacant possession to be given in the said rental house for the Plaintiff to check in.

d) That the Plaintiff be given authority to repossess the Motor Vehicle of Registration Number KBD 757D to recover her rent arrears.

e) Costs be provided for.”

2. The application is supported by the grounds on its face and an affidavit sworn by the Applicant on the date of the application.

3. The Respondent, Lucy Ntinyari, opposes the application through a Preliminary Objection filed on 30th November, 2018 on the grounds that:-

“1) The Applicant’s application is bad in law, fatally defective, incapable of being cured by way of amendment and or null and void *ab-initio*.

2) The application before the Hon. Court is not premised on any suit.

3) The Applicant is unlawfully posing as a bailiff who has unlawfully acted as such in attempting to levy distress over unfounded allegations of rent arrears.”

4. The Applicant’s pleadings discloses that the Respondent who has been her tenant for several years had defaulted in paying rent. She thus seeks to have her evicted. She also wants the court to give her authority to take over the Respondent’s motor vehicle.

5. The Respondent’s position is that the Applicant’s case is bad in law as her application is not premised on any plaint or originating summons.

6. A party who approaches the court for a remedy is under a duty to state the applicable law. Courts act based on the laws of the land. A landlord who desires to evict a tenant must follow the laid down procedure. A claim for eviction should be grounded on a plaint or any other pleading of such kind. There is no such pleading in this case.

7. The Applicant also appear to be saying that she wants the court to assist her to distress for rent. The Distress for Rent Act, Cap. 293 provides the applicable law for distraining for rent. This court cannot simply order that the Respondent's car be given to the Applicant. The Applicant must follow the procedure established by the law in order to access the Respondent's car.

8. In short, the Applicant's application is irregular and without merit. The same is dismissed with costs to the Respondent.

Dated and Signed at Nairobi this 8th day of May, 2019

W. Korir,

Judge of the High Court

Dated, Countersigned and Delivered at Malindi this 20th day of June, 2019

R. Nyakundi,

Judge of the High Court