



**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT MOMBASA**  
**CIVIL CASE NO. 126 OF 2014**

MILKI LIMITED .....PLAINTIFF

VERSUS

PATRICK MUKIRI KABUNDU.....DEFENDANT

**RULING**

The plaintiff, Miliki Limited, is the owner of property subdivision No 1432 of Section 1 mainland North, the suit property Patrick Mukiri Kabundu the defendant purchased a business concern from seafront Entertainment limited which business was being run on the suit property.

Trouble began between the plaintiff and the defendant in the year 2013 when the defendant filed a case before the business Premises Tribunal (BPRT) being case No. 33 of 2013, alleging that the plaintiff had increased the rent.

1. The defendant is acting in person and perhaps because of that he has inundated this court with many documents relating to the various applications and orders made before BPRT. Those documents have to a large extent assisted me to understand the disputes between the parties and the various orders made.

2. What is clear from those documents is that on or about 17<sup>th</sup> October 2014 the BPRT in case No 33 of 2013 dismissed the plaintiffs Preliminary Objection that the defendant's tenancy was not a controlled tenancy within the meaning of the landlord and tenant ( shops, Hotels and catering establishments), Cap 301.

3. What the plaintiff did having lost on that objection, is to come to this court and file this claim. By the plaint the plaintiff seeks the following orders:

**(a) A permanent injunction be issued restraining the defendant either by himself, agent or servant from visiting, entering, possessing, and /or interfering with the applicants ownership and possession in premises on subdivision Number 1432 of Section 1 Mainland North.**

**(b) a permanent injunction be issued restraining the defendant either by himself, agent and/or servant from visiting, entering, possessing and/or interfering with quiet possession of the suit premises by Glory Tabernacle Church, why Not Bar and First Executive Massage Parlour.**

**(c) Any other and further orders as this Honourable court may deem just in the circumstances; and**

4. The plaintiff filed a Notice of Motion dated 14<sup>th</sup> October 2014 at the time when it filed the plaint herein. In that Notice of Motion, which is being considered by this ruling, plaintiff sought for reaching orders, ex parte. Those orders are:

**(a) That this Honourable court be pleased to certify this application as urgent and to direct that the same be heard ex parte in the first instance.**

**(b) That pending hearing and determination of the application inter partes this honourable court be pleased to restrain the defendant either by himself, agent or servant from visiting, entering, possessing, and/or interfering with the applicants ownership and possession in premises on Subdivision on Number 1432 of Section 1 Mainland North.**

**(c) That pending hearing and determination of main suit this honourable court be pleased to restrain the defendant either by himself, agent, or servant from visiting, entering, possessing, and/or interfering with the applicants ownership and possession in premises on subdivision Number 1432 of Section 21 Mainland North.**

**(d) That pending hearing and determination of this application inter partes this honourable court be pleased to restrain the defendant either by himself, agent and/or servant from visiting, entering, possessing and or interfering with quiet possession of the sit premises by Glory Tabernacle Church, why Not Bar and First executive Massage parlour.**

**(e) That pending hearing and determination of the main suit this honourable court be pleased to restrain the defendant either by himself, agent and/or servant from visiting, entering, possessing and/or interfering with quiet possession of the suit premises by Glory Tabernacle church, why Not Bar and First Executive Massage parlour.**

**(f) That the officer commanding Nyali police station to enforce the orders of this honourable court.**

5. The court heard the application on 14<sup>th</sup> October 2014 ex parte, and granted the following orders;

**(a) That the application is hereby certified urgent in the first instance.**

**(b) That a temporary injunction be and is hereby issued pending hearing and determination of the application inter partes restraining the defendants either by himself, agent or servants from visiting, entering, possession and/or interfering with applicant's ownership and possession in premises on subdivision No 1432 of Section 1 Mainland North.**

**(c) That a temporary injunction be and is hereby issued pending hearing and determination of the application inter partes restraining the defendants either by himself, agent or servants from visiting, entering, possessing and/or interfering with a quiet possession of the suit premises by Glory Tabernacle Church, Why Not Bar and First Executive Massage Parlour.**

**(d) That the application be mentioned on the 28<sup>th</sup> October 2014 for further directions.**

6. Since this case and the BPRT case No 33 of 2013 were parallel the parties when they appeared before the BPRT on 23<sup>rd</sup> October 2014 the plaintiff's advocate in-formed the chairman of the Tribunal that the defendant had been evicted. This is what the proceedings before the chairman of the tribunal reveal:

**REPUBLIC OF KENYA**

**BUSINESS PREMISES RENT TRIBUNAL**

**TRIBUNAL CASE NO. 33 OF 2013- MOMBASA**

**PATRICIK MUKIRIKABUNDU**

**T/AIVORY SPORTS PUB.....TENANT/APPLICANT**

**VERSUS**

**MILIKI LIMITED.....LANDLORD/RESPONDENT**

**PROCEEINGS**

**23.10.2014**

**Coram**

**Mbichi Mboroki – Chairman**

**Okello- court clerk**

**Kithii for the landlord**

**Tenant – Present**

**Tenant’s application dated 25<sup>th</sup> September 2014**

**Mr Kithii: The tenant was evicted pursuant to a high court order of 17<sup>th</sup> October 2014 in HCCC No. 126/2014(Mombasa).**

**The premises are now occupied by Glory Terbanacle Church.**

**Order;**

**The HCCC No 126/2014 will be heard on 28<sup>th</sup> October 2014.**

**By consent, hearing on 20<sup>th</sup> November 2014.**

**MBICHI MBOROKI**

**CHAIRMAN**

**BUSINESS PREMISES RENT TRIBUNAL**

7. That information given to the chairman of the Tribunal is diametrically opposed to what the plaintiff pleaded in its plaint. In paragraph 9 of the plaint the plaintiff pleaded that the defendant had failed to pay rent arrears of Ksh 2.6 million and that the defendant stole and destroyed the plaintiff’s furniture valued at Ksh7 million. The plaintiff then pleaded in paragraph 10 thus:

***In view of the forgoing acts of impunity by the defendant, the plaintiff successful evicted the respondent from the suit premises. The applicant being faced with breach of the lease mitigated its loss by leasing the premises to Glory tabernacle church.***

8. In summary the plaintiff, if the above proceedings in BPRT No 33 of 2013 are correct, effectively lied to this court that it had, by the time it filed its plaint in this case, evicted the defendant from the suit property. As a consequence of that information this court issued far reaching orders ex parte against the defendant.

9. The plaintiff has caused the dispute between it and the defendant to muddled and right now confusion reigns. I say so because on 27<sup>th</sup> March 2015 BPRT issued the following order:

**REPUBLIC OF KENYA**

**BUSINESS PREMISES RENT TRIBUNAL**

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**PATRICIK MUKIRIKABUNDU**

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**VERSUS**

**MILIKI LIMITED.....LANDLORD/RESPONDENT**

**ORDER**

**THIS SUIT coming up for Ruling on 27<sup>th</sup> March 2015 before Mbichi Mboroki ( Chairman) in the presence of Makoha holding brief for Kithi for the landlord/respondent.**

**AND UPON RULING- IT IS ORDERED THAT:**

- 1. The landlord/respondent either by itself, its agents, servants and or employees is restrained and prohibited from levying distress, moving away the tenant's/applicant's goods, evicting the tenant and /or in any other way dealing with the premise in dispute in any way that may interfere with the tenant's applicant's quiet possession and enjoyment thereof pending hearing and determination of this complaint interparties.**
- 2. The landlord shall facilitate the reconnection of electricity and water to the tenants demised premises subject to the tenant settling the outstanding bills to the service providers.**
- 3. The costs of all the applications shall abide the outcome of the reference.**
- 4. The reference shall be heard in the tribunal next session at Mombasa by way of viva voce evidence.**

**GIVEN UNDER my hand and the seal of this tribunal this 27<sup>th</sup> March 2015.**

**ISSUED this 31<sup>st</sup> day of March 2015.**

**MBICHI MBOROKI**

**CHAIRMAN**

**BUSINESS PREMISES RENT TRIBUNAL**

10. As a result of the plaintiff filing this case while the matter before BPRT is still going on this court and the Tribunal have issued conflicting orders. What concerns me more is that the plaintiff is represented by a firm of advocate who are expected to uphold high standard in approaching the court.

11. What was before me in this Ruling was the inter partes hearing of the plaintiffs Notice of Motion dated 14<sup>th</sup> October 2014 seeking injunctive orders against the defendant as reproduced above; and the defendants Notice of Motion dated 19<sup>th</sup> October 2014, whereby the defendant seeks the setting aside or discharge of the ex part orders issued on 14<sup>th</sup> October 2014.

12. Having gone through the voluminous documents in this file I find that interest of justice is well served by discharging all orders made in this file and staying this suit, parties should then concentrate in the matter before the BPRT.

13. **In conclusion I grant the following orders:**

**(a) The orders granted on 14th October 2014 are hereby set aside and discharged.**

**(b) This case is stayed until conclusion of BPRT No 33 of 2013 or until further orders of this court.**

**(c) The Notice of Motion dated 14<sup>th</sup> and 17<sup>th</sup> October 2014 are hereby dismissed with costs to the defendant.**

**(d) The Notice of Motion dated 19<sup>th</sup> October 2014 is granted in terms of prayers 3 with costs to the defendant.**

Dated and delivered at Mombasa this 25<sup>th</sup> day of June 2015.

**MARY KASANGO**

**JUDGE**

25.6.2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

For Plaintiff:

For Defendant:

**Court**

Ruling delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**