



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT NO. 73 OF 2014

MERCY WANJIKU SITTON PLAINTIFF

VERSUS

IRENE OGALIS T/A OGALIS HOLDING LIMITED.....DEFENDANT

RULING

1. This suit was filed by plaintiff on 10th June 2014 seeking an order of injunction to restrain the defendant from evicting and interfering with the plaintiff's quiet and peaceable enjoyment of the leased property. The plaintiff also filed a notice of Motion Application dated 6th June 2014 seeking an order of injunction to restrain the defendant from evicting and interfering with the plaintiff's quiet and peaceable enjoyment of the leased property pending hearing and determination of the suit.

2. The defendant then filed a Notice of Preliminary Objection dated 8th July 2014 in which she objects to the suit on the following grounds.

i) That this Honourable court lacks the requisite jurisdiction to hear and determine this suit. The alleged cause of action accrued from a Landlord Tenancy relationship which is the subject of Business Premises Rent Tribunal (BPRT).

ii) In any event this suit is incurably defective as against the defendant for being frivolous and vexatious.

iii) This suit is a non-starter in law and ought to be struck out with costs.

3. The defendant's Preliminary Objection, in a nutshell, is that this court lacks jurisdiction to hear and determine this suit because it relates to controlled business premises which fall under the Landlord and Tenants (Shops, Hotels and Catering Establishment) Act, Cap 301 of the Laws of Kenya.

4. Save for costs, the one and only prayer in the plaint is for injunction to restrain the defendant from evicting and interfering with the plaintiff's quiet and peaceable enjoyment of the subject premises. It is the same prayer that the plaintiff seeks in the Notice of Motion dated 6th June 2014 for interlocutory orders pending hearing and determination of the suit. Clearly, this suit is for an order of injunction.

5. It is trite law that a tribunal such as the Business Premises Rent Tribunal (BPRT) has no jurisdiction to issue an order of injunction against the landlord. This was held in the case of ***Republic v Business Premises Rent Tribunal & another Ex-parte Albert Kigera Karume & another, Nairobi High court JR Misc. application No. 435 of 2012 (2013) eKLR*** where Odunga, J. stated as follows:

“In Nashids & company Limited vs Nyali Air conditioning and Refrigeration Services Limited Civil

Appeal No 3205 of 1995, the court of appeal held that a controlled tenant confronted with an illegal threat of forcible eviction cannot go to the Business Premises rent Tribunal established under the Act as that Tribunal has no jurisdiction to issue an injunction or similar remedy against the landlord.”

6. The plaintiff as can be seen from the above holding cannot be faulted for seeking injunction before this court. It is not right to say, as the defendant argues, that the plaintiff ought to have filed this suit which seeks an order of injunction, in the BPRT since the BPRT lacks the requisite jurisdiction to issue injunction order. **The preliminary objection therefore has no basis and is for the above reason dismissed with costs to the plaintiff.**

Dated and delivered at Mombasa this 25th day of June 2015

MARY KASANGO

JUDGE

25.6.2015

Coram

Before Justice Mary Kasango

C/Assistant – Kavuku

For the plaintiff:

For the defendant:

Court

Ruling read in the presence/absence in open court

MARY KASANGO

JUDGE