

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ENVIRONMENT AND LAND CASE NO. 109 OF 2014

CATHERINE NGINA MULI.....PLAINTIFF/APPLICANT

-VERSUS-

MUIRI PROPERTY LIMITED & ANOTHER.....DEFENDANTS/RESPONDENTS

RULING

1. The application dated 16th May 2014 does not specify under what provisions of law it was brought. It sought the following prayers :-

- (a) A preservation order or an inhibition do issue to preserve the status quo with regard to the controlled tenancy of shop No. 345 situated at Millennium Building opposite Kenol Petrol Station;
- (b) The plaintiff ordered to deposit rent of Kshs. 8,500 per month, the defendants to collect at its own expense
- (c) Costs of this suit and interest at Court rates.

2. The motion is premised on the grounds on the face of it and the supporting affidavit sworn by Catherine Ngina Muli the applicant. The application is opposed by the defendants/respondents. In a replying affidavit sworn by David Kuria, the 1st defendant deposes that this matter ought to have been filed in the Business Premises Rent Tribunal; Mombasa and not in this Court. The 1st defendant also denied that they have refused to accept rent except the plaintiff filed this case because she had breached the tenancy agreement by subletting and annexed pleading in BPRT case No 51 of 2014 between her and the sub tenant. Lastly he stated that the Chairman of the BPRT was appointed on 3rd February 2014. The respondents urged this Court to strike out the application with costs to them.

3. The parties advocates' made oral submissions before me. Mr Omolo for the applicant submitted that the applicant has been a tenant paying a monthly rent of Ksh 8500 which she paid upto March 2014 when the 1st defendant declined to receive the rent on basis of a new tenant. Further that their lease was for 5 years from January 2013 and the applicant fears being evicted and or distress being levied. He also submitted that when the case was filed, the Chairman of the BPRT had not been appointed. The applicant urged the Court to allow the application.

4. Mr Muchiri on his part submitted that there is no evidence upon which the applicant's fear is founded. Secondly, there is no reason why this matter was not filed in the BPRT. Thirdly the applicant has not paid rent for the last 16 months with rent arrears now outstanding at Kshs 100,000=. Further in BPRT case No 51 of 2014 shows the plaintiff sublet the premises without the consent of the landlord. He urged the Court to dismiss both the suit and the application and or transfer this suit to the BPRT. He also urged the Court to order the applicant to pay all the outstanding rent arrears.

5. I have considered the pleadings filed and the submissions rendered. I note that the prayers sought in the application are similar to the prayers contained in the plaint. From the pleadings and submissions made by the applicant it is clear the defendants had not taken any steps to either levy distress or issue any

notice for vacant possession. The plaintiff did not annex any evidence of forwarding any rents to the defendants which was then returned. On this account, I agree with the defendants' submission that this fear was unfounded. Secondly the applicant has not denied the existence of BPRT case No 51 of 2014 between her and Samuel Kazungu Mramba. From the document annexed, the same was lodged on 28th April, before this suit was filed.

6. The matter in dispute is about tenant/Landlord relationship which is governed by the Landlord and Tenant Act Cap 301 of the laws of Kenya. The proper forum to file this suit ought to be Business Premises Rent Tribunal. Once the applicant was served with the BPRT case No 51 of 2014, she had the opportunity to enquire whether there was a Chairman or not. No evidence of such enquiries was shown to this Court. As per the annexed gazette Notice by the respondent, the Chairman was already in office when this suit was filed. Since the defendant's Counsel has asked for payment of rent arrears and since there is no evidence of distress or eviction I find no dispute/claim to be transferred to the BPRT for hearing and determination.

7. In conclusion, I find no merit in the present application and dismiss it with costs. On the main suit, I am also satisfied that the objection on jurisdiction is merited. The suit is hereby struck out. In case there emerges genuine threats against the plaintiff's tenancy, she can file a fresh claim before the proper Court. The defence had not filed any documents to respond to the plaint because of that, I make no order as to costs on the suit struck out.

Ruling read and delivered at Mombasa on this **29th** day of **September, 2015**

A. OMOLLO

JUDGE