

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 146 OF 2014

BETWEEN

HELLEN ATIENO OSWAGO.....PETITIONER

AND

ELSIE OTIENO.....RESPONDENT

JUDGMENT

1. The petitioner in this case is the tenant while the respondent is the landlord of some business premises situated at LR No. 209/1146 at Menengai Road, Upper Hill, Nairobi. She claims that that the landlord unlawfully levied distress and as a result she filed a complaint at the Business Premises Rent Tribunal (“the Tribunal”) being *Tribunal Case No. 165 of 2014* seeking orders to restrain the landlord from, *inter alia*, interfering with the premises and her quiet possession pending hearing of her complaint.
2. The reason for filing the petition dated 31st March 2014 is to preserve the status quo as the Tribunal has not been constituted by having a sitting Chairperson. The petitioner seeks interim relief grounded on the provisions of the Constitution that protect the right of access to justice particularly **Article 48**.
3. The purpose of the petition is to preserve the matter so that the Tribunal proceedings are not rendered nugatory by what are clearly circumstances beyond her control. I have read the depositions filed by the parties and heard counsels’ submissions and I take the following view of the matter. On the one hand, the petitioner admits that she owes at least Kshs 394,000/= rent while on the other hand, the respondent claims Kshs 580,000/= outstanding rents. Where the truth lies will be a matter for the Tribunal to resolve. All I am required to do is to balance both parties’ interests pending the constitution of the Tribunal.
4. In the circumstances, the orders that commend themselves to the Court are as follows;
 - i. **The petitioner shall pay to the respondent Kshs 150,000/= together with reasonable auctioneers’ charges within the next 7 days whereupon the respondent shall release all the distressed property and allow the petitioner to operate her business in the premises.**
 - ii. **The respondent is restrained from levying further distress or in any way interfering with the suit premises pending any further orders that may be issued in *Nairobi BPRT Case No. 165 of 2014*.**
 - iii. **The petitioner shall continue to pay rent as and when it falls due and in default order (ii) shall lapse without reference to Court or the Tribunal.**
 - iv. **There shall be no order as to costs.**

DATED and DELIVERED at NAIROBI this 14th day of April 2014.

D.S. MAJANJA

JUDGE

Mr Nyangito instructed by Nyangito and Company Advocates for the petitioner.

Mr Muganda instructed by Sagana, Biriq and Company Advocates for the respondent.