



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 58 OF 2014

AGNES WAMBUI PETER PLAINTIFF

V E R S U S

HASAT DHANJI GOVID 1ST DEFENDANT

HALAI SHAKUNTLA HARSHAD ... 2ND DEFENDANT

RULING

1. The Plaintiff is a tenant of the Defendants at the premises situated on **Plot No. 3535/MI/MN at Ratna Kongowea, Mombasa (suit property)**. That relationship is either not regulated by a lease or is under a two year lease in an undated and unexecuted lease by the Defendants. The only signature on that lease is that of the Plaintiff. Alternatively the relationship is under an oral agreement. Either way the parties relationship is governed by The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301. Accordingly as provided under that Act the parties dispute ought to be before the Business Premises Rent Tribunal (BPRT). However it is important to note that for sometime now there has not been a Chairperson to sit at the BPRT and parties with disputes touching on that Tribunal have had to file their actions before the High Court.
2. There are two Notices of Motion being considered in this Ruling.
3. The first in time is by the Plaintiff. It is dated 13th May 2014 (Plaintiff's Notice of Motion). Plaintiff by that Notice of Motion seeks an injunction to restrain Defendants from interfering with Plaintiff's tenancy pending the hearing and determination of BPRT No. 54 of 2014.
4. The second is the Defendants' Notice of Motion dated 20th May 2014 for an injunction to stop Plaintiff from removing, alienating or in any way disposing the moveable property in Plaintiff's shop at the suit property.
5. Plaintiff deponed in her affidavit in support of her Notice of Motion that she conducts a tailoring business on the suit property. She signed a two year tenancy agreement on 13th July 2012 and thereafter paid Defendant's Advocates Kshs. 45,000/- being two months rent in advance plus one month rent. It was a term of that lease that Plaintiff was to enjoy supply of water without making payment but that the Defendants had later demanded that she pay Kshs. 1,800/-. When she refused to pay Defendants disconnected her water supply. Plaintiff further deponed that Defendants interfered with her electric power supply for one week which adversely affected her tailoring business. That the Defendants had refused to accept rent payments in any other form

other than by cash and had in turn refused to issue Plaintiff with receipts for such payments. Further that the Defendants had sought to increase the rent from Kshs. 15,000/- to Kshs. 19,000/-. In addition to this Plaintiff deponed that Defendants have been harassing her workers.

6. When Plaintiff's Notice of Motion filed in Court on 13th May 2014 came up before Court on Certificate of Urgency the Court granted Plaintiff interim injunction restraining Defendants from interfering with Plaintiff's use and occupation of the suit property.
7. It does seem that the interim order granted to the Plaintiff on 13th May 2014 provoked Defendant to file their Notice of Motion dated 20th May 2014. Defendant sought by that Notice of Motion to restrain Plaintiff from removing or disposing moveable property from her shop. Defendant deponed in support of that application, that the Plaintiff was using the interim injunction of 13th May 2014 to remove "goods and/or tools of trade from the suit premises with the aim of defeating any consequent judgment that we (Defendants) may obtain against her." That such removal of goods by Plaintiff would make it impossible for Defendants to recover outstanding rent arrears from Plaintiff. Defendant did categorically state what, if any, was the rent arrears allegedly owed by the Plaintiff. What the Defendant used as a basis to get restraining orders against Plaintiff was Plaintiff's deposition in her affidavit of 13th May 2014 that defendants had failed to collect from her rent of Kshs. 45,000/- because they were unwilling to issue her with receipt for the same. But in that affidavit Plaintiff did also deponed that she sent to Defendants by Mpesa Kshs. 30,000/- on 9th May 2014 and again on 12th May 2014 a further Kshs. 30,000/-.
8. The Plaintiff's case as stated before is governed by Cap 301. Plaintiff is a protected tenant under that Act. Section 4 of that Act is the Section that the Defendants have to comply with if they desire to alter any terms of Plaintiff's tenancy. This means that if Plaintiff has enjoyed water supply without payment and also electric power the Defendants cannot withdraw these utilities without giving Plaintiff notice as per the Act. Section 4 states as follows-

"4. (1) Notwithstanding the provisions of any other written law or

anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act.

2. **A landlord who wishes to terminate a controlled tenancy, or to alter, to the detriment of the tenant, any term or condition in, or right or service enjoyed by the tenant under, such a tenancy, shall give notice in that behalf to the tenant in the prescribed form.**
 3. **A tenant who wishes to obtain a reassessment of the rent of a controlled tenancy or the alteration of any term or condition in, or of any right or service enjoyed by him under, such a tenancy, shall give notice in that behalf to the landlord in the prescribed form.**
 4. **No tenancy notice shall take effect until such date, not being less than two months after the receipt thereof by the receiving party, as shall be specified therein:"**
9. The Defendant in my view has failed to show that Plaintiff is in rent arrears to justify the orders they seek by their Notice of Motion. As stated before Plaintiff deponed to the Defendant's refusal to receive rent in any other form but cash and were refusing to issue receipts for such payments. Plaintiff also deponed that she had made payment of rent for total Kshs. 60,000/- to Defendants through Mpesa. In regard to the rent payment of Kshs. 45,000/- made by Plaintiff through the Defendant's Advocate when Plaintiff executed the lease, Defendant referring to the Advocate's receipt of that amount deponed-

"That the allegation in paragraph 3 of the supporting affidavit that the Applicant

(Plaintiff) paid a deposit of Kshs. 45,000.00 is also a lie because the official receipt annexed as 'AWP-2' clearly indicates that the money is for 'lease agreement' and not rent. Paying of legal fees does not equate to paying rent."

I have perused that receipt and it is clear the same was made under the title "**Clients Account**". That can only mean the Plaintiff's payment of Kshs. 45,000/- was not for fees, if it was, the title of the receipt would have been "**Office Account**." That submission by Defence is therefore rejected.

10. In the end I find Plaintiff's application is merited and I grant the

following orders-

- (a) An injunction is hereby issued restraining the Defendants, their servants, agents or anyone from interfering with Plaintiff's occupation/tenancy and use of electricity and water at the property situated on Plot No. 3535/MI/MN at Ratna, Kongowea, Mombasa until further orders of this Court or of the Business Premises Rent Tribunal.**
- b. Defendants Notice of Motion dated 20th May 2014 is dismissed with costs to Plaintiff.**
- c. Plaintiff is awarded costs of Notice of Motion dated 13th**

May 2014.

DATED and DELIVERED at MOMBASA this 17th day of JULY, 2014.

MARY KASANGO

JUDGE