



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
ENVIRONMENT AND LAND COURT
MISC CASE NO 8 OF 2014
KANTHILAL RAMJI BHUNDIA T/A NIKI WEAR.....APPLICANT
VERSUS
JOSEPH MWANIKI NDEGWA.....RESPONDENTS
BIASHARA SACCO LIMITED.....INTERESTED PARTY
CONSOLIDATED WITH
MISC. APPLICATION NO 2 OF 2014
PRISCCILLA WAMBUI MATHENGE.....APPLICANT
VERSUS
JOSEPH WAITIKI NDEGWA.....RESPONDENT
AND
MISC. APPLICATION NO 3 OF 2014
SAMUEL KAMENJU.....APPLICANT
VERSUS
JOSEPH WAITIIKI NDEGWA.....RESPONDENT
RULING

The applicants have filed in this court their various applications seeking orders of injunction pending the hearing and determination of reference each has filed to the Business Premises Rent Tribunal(B.P.R.T). The issue in the matter relates to tenancy of the applicants in **NYERI MUNICIPALITY BLOCK 1/89**

(Suit premises). The tenants had entered into tenancies of several years with the respondent who sold the suit property to the interested party as per the attached sale agreement.

After the sale was concluded, the respondent issued the tenants with a 3 months notice to vacate the suit premises, pursuant to Sec 4(2) of Landlord & Tenant (Shops, Hotels and Catering Establishments) Act (Cap 301) (Act). The notice was to take effect on 31st December 2013. The applicants each had one month to object to the notice and those who objected have filed their notices of opposition to the intended termination in form under Sec 6 of the Act in the BPRT, as was directed by the respondent. It is stated that there were 18 tenants in the suit premises and the rest left as per the notice, leaving the 3 who are in this matter.

After expiry, the respondent wrote to the water and electricity provider, the Nyeri Water and Sewerage Company and the Kenya Power and Lighting respectively, to remove their meters in the premises leaving only the meters which supply water to his own premises, indicating the premises were to be demolished so as to put up a modern 6 storey building. In most houses the meters were removed as the tenants vacated. Meters of the applicants were not removed as they obtained restraining orders from this court against the respondent and the interested party, when they approached the court on premises that the BPRT had not yet been convened to enable them seek the appropriate orders from there.

The respondent and the interested party were restrained by this court from altering the user of the suit premises but at one point removed the roof, and also blocked the entrance of the suit premises by depositing sand at the entrance among other grounds and the court had a site visit in the suit premises. The respondent said that the premises were in bad condition and needed renovation for habitation. The health officer prepared a report to the same effect.

The applicants have approached this court invoking its inherent jurisdiction to hear the matter on grounds that by the time they were filing the matter the BPRT had not convened. The respondent raised an objection to the jurisdiction of this court to hear the matter, which the court found it had jurisdiction.

The application before me is dated 21st February 2014 wherein the applicants seek for orders that the 2nd Respondent be compelled by way of Mandatory injunction to replace the mabati roof over the applicant's rented premises within NYERI/MUNICIPALITY BLOCK 1/89 pending hearing and determination of the application and reference. The application is based on Grounds that upon the removal of the sand as ordered by the court On 13th February 2014 the 2nd respondent removed the roof of the premises in contravention of the order of the court.

At the hearing the parties were represented by their counsels. Mr. Muhoho was for the applicants in the consolidated application, while Mr. Nganga for interested party and M/s Nderitu represented the respondents.

That application was opposed by the respondent and the interested party, on grounds that the interested party is not a party before the tribunal. Respondents also relied on the report of the health officer stating that the premises are unsuitable for habitation and business due to their state and needed renovation/repairs and or demolishing to be rebuilt again to a house suitable for occupation. They also relied on the fact that the suit premises were sold with vacant possession.

I have considered the pleadings and the rival arguments of the parties here in. Since the court has inherent jurisdiction as per its ruling dated 24th Feb 2014, I now turn to the prayers sought by the applicant in the notice of motion,

The main issue in the matter is the concern of the applicants on how to deal with the state of affairs with a new landlord whom they have no contractual relationship with, the respondent having served a termination notice of tenancy which they have already contented by a reference filed. On this ground the respondent and the interested party relies on the ground that the suit property was transferred subject to vacant possession, as stated in their replying affidavit.

This point was ventilated in the case of **Caledonia Supermarket Ltd v Kenya National Examination Council [2000] 2 EA 351**, where the new landlord under a sale contract was arguing that the former tenants had lost protection once the property was sold and transferred it, as the new buyer. It was held that an incoming owner of premises after acquisition of property had an obligation to give notice to the protected tenants under controlled tenancy even if they had lost that status. Verbatimly the court held;

“If the acquisition was subject to tenancy, the council was obliged to comply with sec 4 of the Act to obtain vacant possession. The fact that the council had not accepted rent from them was irrelevant.”

In this case it was held that if this is not fulfilled, then the new premises owner ought to give a notice to any 3rd party who is affected by the change of ownership. The claim for vacant possession by the respondent and the 3rd party is thus according to case law subject to issuance of tenancy termination notice, by the incoming owner. This position was reiterated by the court of appeal in the case of **South C Fruit Shop Limited V Housing Finance Company Of Kenya Limited [2013] eKLR**, where the court held that a controlled tenancy can only be terminated by issuing notice prescribed under the Act, referring to other similar rulings **Tiwi Beach Hotel Limited v Juliane Ulrike Stamm [1991] KLR 658**; **Munaver N. Alibhai t/a Diani Boutique v South Coast Fitness & Sports Centre Limited [1995] eKLR (Civil Appeal 203 of 1994)**.

The court went ahead and noted that informing the tenants by word of mouth was not sufficient to terminate a tenancy as envisaged in the act, by stating “ ***Even assuming that it was in doubt that the appellant was a protected tenant, the respondent still ought to have given appropriate notice to the appellant of its intention to take over the suit premises***”.

In the light of the findings, I find that the interested party has not served the requisite notices to the applicants to entitle it to vacant possession since the applicants have contested the termination notices issued by its predecessor in title, and stayed in the suit premises after the termination. In that respect the applicants could not have had basis for approaching the BPRT in its respect as a landlord which then clothed this court with jurisdiction in the matter.

This court visited the disputed premises and saw the roof removed by the respondent. A report by the ministry of public health and sanitation was also availed indicating that the building was not safe for human habitation.

This court finds that the act of removing the roof of the business premises amounted to eviction of the applicants. This was done despite the order of the court and an automatic stay pursuant to the provisions of section 6(1) of CAP 301. I have perused the report by the public health officer and do find that the building needs total repair and not the replacement of the roof alone. The applicants ought to have moved the court for the punishment of the respondents for contempt but they did not. This court cannot issue orders in vain and therefore the application is declined with no orders as to costs as the respondents did not act in goodfaith.

Dated, signed and delivered at Nyeri This 11th of December,2014

A. OMBWAYO

JUDGE