



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 264 OF 2008**

**MOHAMED ABDULLAHI ABDI ..... PLAINTIFF**

**VERSUS**

**AL HAG HOLDINGS LIMITED ..... DEFENDANT**

**RULING**

1. This suit involved a landlord and tenant dispute. The Plaintiff is the tenant while the Defendant is the landlord. The dispute was over rent and distraint for rent. The reliefs sought by the Plaintiff were appropriate injunctions and declarations.
2. Together with the plaint the Plaintiff filed chamber summons dated 19<sup>th</sup> June 2008. He sought appropriate temporary injunction to restrain the Defendant from distraining for rent against him pending disposal of suit. The application came up before the Duty Judge on 20<sup>th</sup> of June 2008 who granted interim injunction *ex parte* upon condition, *inter alia*, that the Plaintiff deposits in court the sum of KShs 137,000/00 as security within seven (7) days. The Plaintiff duly complied.
3. On 24<sup>th</sup> July 2008 the following consent order was recorded -

**“(i) Prayer No 2 of the chamber summons dated 19/6/2008 be and is hereby granted.**

**(ii) The disputed rent with regard to the period 1<sup>st</sup> January 2006 to 1<sup>st</sup> July 2008 shall await the outcome of the Nairobi BPR Tribunal case No. 182 of 2008 between the parties.**

**(iii) The Plaintiff to pay monthly rent to the Defendant from 1<sup>st</sup> August 2008 at the rate of KShs 32,500/00 until disposal of Nairobi BPR Tribunal Case No. 182 of 2008.**

**(iv) Costs of the application shall be in the cause.”**

4. The Plaintiff has now applied by **notice of motion dated 21<sup>st</sup> December 2012** under **sections 1A, 1B, and 3A** of the **Civil Procedure Act, Cap 21** (the **Act**). The main order sought is that the sum of KShs 137,000/00 deposited in court as security by the Plaintiff on 20<sup>th</sup> June 2008 be released to him. The grounds for the application appearing on the face thereof include –

- i. That the PBR Tribunal has now decided its case No. 182 of 2008 to the effect that the Plaintiff had overpaid rent in the sum of KShs 219,450/00 in the disputed period.
- ii. That it is therefore fair and just that the order sought in this application be granted.

There is a supporting affidavit sworn by the Plaintiff to which is annexed a copy of the BPR Tribunal order in its case No 182 of 2008 given on 14<sup>th</sup> and issued on 26<sup>th</sup> September 2012. That order states –

**“1. Rent is suspended and the tenant’s account is credited to enable the tenant recover the overpaid rent of KShs 219,450/00.**

**2. The tenant shall resume rent payment after recovering the overpaid rent.”**

5. The Defendant has opposed the application by **replying affidavit sworn by one ASSAD NIAZ**, a director of the Defendant, **filed on 16<sup>th</sup> May 2013**. The grounds of opposition emerging therefrom include -

- i. That the Government issued a public notice on taxation of non-residential buildings effective 1<sup>st</sup> January 2008.
- ii. That the Defendant brought the said notice to the Plaintiff’s attention for payment of the tax (being 16% VAT) which increased the Plaintiff’s rent to KShs 37,700/00.
- iii. That the Plaintiff was thus required to pay VAT in addition to rent of KShs 5,200/00 per month.
- iv. That the Plaintiff never paid the said VAT despite constant reminders, which forced the Defendant to pay the same.
- v. That the Defendant therefore seeks reimbursement from the Plaintiff of accrued VAT in the sum of KShs 249,600/00 for the period of four years from 2008 to 2011.
- vi. That the sum of KShs 137,000/00 deposited by the plaintiff in court should go towards partially settling the VAT owned by the Plaintiff and should not be released to him.

6. I heard this application on 27<sup>th</sup> May 2013. I have considered the submissions of the learned counsels appearing. I have also perused the court record.

7. There is no counterclaim by the Defendant for any unpaid VAT or for anything else for that matter. At any rate, the deposit of KShs 137,000/00 was ordered to be made for a very specific purpose. That purpose was that it was to be security for the rents in dispute in exchange of interim injunction. By the consent order of 24<sup>th</sup> July 2008, that dispute over rent was to be resolved by the BPR Tribunal in its Case No. 182 of 2008. There is no dispute that the Tribunal has now resolved that dispute by its order given on 14<sup>th</sup> and issued on 26<sup>th</sup> September 2012. The finding of the Tribunal was in favour of the Plaintiff, to the effect that he had overpaid the Defendant rent to the tune of KShs 219,450/00.

8. That being the case, there is no reason whatsoever to deny the Plaintiff a refund of the KShs 137,000/00 deposited in court by him. This application must be and is hereby allowed as prayed with costs to the Plaintiff. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JUNE 2013**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF JUNE 2013**