



**BORABU INSTITUTE OF TECHNOLOGY & TRAINING
LIMITED.....PLAINTIFF**

-VERSUS-

**JOSEPHINE MORAA NYARIOBI.....
DEFENDANT**

RULING

The plaintiff is a tenant of the defendant having entered into a lease agreement on 2nd January 2008 for a period of six years commencing January 2009 to December 2014. The plaintiff runs an educational institute on the premises. As part of the preparation to mount the educational programmes, the plaintiff agreed with the defendant to expend money in renovation. The plaintiff alleges that it spent Kshs.460,000/= out of which Kshs.255,052/= has been refunded to the plaintiff leaving a balance of Kshs.204,958/=

Sometimes in 2011, the plaintiff and the defendant disagreed on the tenancy agreement terms including the rent payable, the arrears and the cost of renovation. The defendant obtained an ex-parte order vide ***Keroka Misc. Application No. 41 of 2011*** and levied distress for rent against the plaintiff. Subsequently **M/s Muriri Auctioneers** on instruction of the defendant attached goods belonging to the plaintiff.

The distress prompted the plaintiff to file suit seeking a declaratory order that the distress for rent was null and void *ab initio*, a permanent injunction to restrain the defendant from disposing of the attached goods and damages for breach of the lease agreement.

Contemporaneously, the plaintiff filed the instant application dated 24th October 2011 seeking a temporary injunction and a permanent injunction pending the hearing and determination of the application and suit respectively as well as an order compelling the defendant to return the seized goods namely the applicant's tools of trade.

The defendant has filed a replying affidavit in which she avers that the applicant had defaulted on rent payment which entitled her to levy distress by operation of the law. She disputes that the applicant expended Kshs.460,000/= in renovations and that the costs of the renovations were to be agreed on between the parties. She has submitted that it was an express term of the agreement that the value of renovation, fittings and fixtures was to be ascertained by both parties and deemed as deposit refundable at the termination of the lease agreement or converted to monthly rent payable at the instance of the defendant.

From the rival submissions, it is evident that the dispute revolves around the amount of outstanding rent as each party has stated varying figures, cost of renovation and whether or not that was converted to rent; and, the amount of monthly rent.

The plaintiff claims that rent was reduced from Kshs.26,620/= to Kshs.12,000/= while the defendant insists there was no such agreement. It is apparent that to do justice in this case, all these issues must be ventilated in a full hearing. The court cannot determine these issues at this interlocutory stage. I am also of the view that the orders sought cannot be granted as to do so would amount to granting final orders at

this interlocutory stage. In the circumstances of this case therefore and in the interests of justice, I make the following orders;

- (1) *The defendant to release to the applicant the seized goods upon the applicant meeting the costs of the attachment.*
- (2) *The applicant to deposit into court Kshs.100,000/= being security for costs.*
- (3) *Costs of this application will follow the outcome of the main suit.*
- (4) *The main suit be set down for hearing on priority basis upon compliance with the Rules.*

Ruling dated, signed and delivered at Kisii this 23rd day of August, 2012.

R. LAGAT-KORIR

JUDGE

In the presence of :

Edwin Mongare Court clerk

.....Counsel for the plaintiffs/Appellant

.....Counsel for the defendants/respondent

R. LAGAT-KORIR

JUDGE