



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 243 OF 2008

SPANNER RIGHT AUTO LIMITED..... PLAINTIFF

V E R S U S

SHELL & BP (MALINDI) KENYA LIMITED..... DEFENDANT

R U L I N G

The Plaintiff brought this suit by plaint dated 13th June, 2008 upon the basis that it was a controlled tenant of the Defendant under the **Business Premises (Shops, Hotels and Catering Establishments) Act, Cap 302** and that the Defendant could not lawfully distress for rent against the Plaintiff without leave of the Business Premises Rent Tribunal established under that Act.

The main relief sought in the plaint is a permanent injunction to restrain the Defendant, in effect, from ever levying distress against the Plaintiff in the business premises occupied by it in land parcel **L.R. No. 2259/179**, situated at Karen in Nairobi.

Together with the plaint the Plaintiff filed a chamber summons of the same date seeking a temporary injunction to restrain the Defendant from levying distress against the Plaintiff pending disposal of the suit. That application was argued *inter partes*, and in a ruling dated and delivered on 2nd October, 2008 the court (Sitati, J) dismissed the application.

In the ruling the learned judge made two findings. The first one was that the Plaintiff was not a controlled tenant; the second that even if it was a controlled tenant, the law does not require the Defendant to obtain leave of the Business Premises Rent Tribunal before levying distress, as long as the Defendant can demonstrate that there are rent arrears.

The Defendant has now come to court by chamber summons dated 10th September, 2010 seeking an order to strike out the Plaintiff's suit upon the two findings in the aforesaid ruling of the court dated 2nd October, 2008. The application is supported by an affidavit sworn by one Alison Kariuki, the Legal Officer of the Defendant.

The Plaintiff was duly served with the application on 21st February, 2011. No papers were filed in response.

At the hearing of the application on 21st March, 2011, there was no appearance from the Plaintiff despite service. In presenting the application, learned counsel for the Defendant informed the court that the Plaintiff vacated the suit premises in October, 2008.

It does appear that after the ruling delivered on 2nd October, 2008 the Plaintiff may have lost interest in the suit and vacated the suit premises. At any rate, the application now before the court is not opposed, as already pointed out, and for good reason.

The court having found in the ruling of 2nd October, 2008 that the Plaintiff was not a controlled tenant, and, further, that the Defendant did not require leave of the Business Premises Rent Tribunal to levy distress for rent against it if any rent arrears were due, the substratum of the suit was lost. The same can no longer be maintained.

In the event I allow the application. The Plaintiff's suit is hereby struck out with costs to the Defendant. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF APRIL, 2011

**H.P.G WAWERU
JUDGE.**

SIGNED AND DELIVERED THIS 8TH DAY OF APRIL, 2011.