



CIVIL PRACTICE AND PROCEDURE

- *How should a civil suit be initiated.*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. APPLICATION NO. 13 OF 2011

MICHAEL KUNGU KIGIA.....APPLICANT

VERSUS

MERU TEACHERS HOUSE LTD.....RESPONDENT

RULING

Michael Kungu Kigia has filed a Notice of Motion dated 24th February 2011. It is brought under order 51 of the Civil Procedure Rules 2010 sections 3A, 63 (e) of the Civil Procedure Act Cap 21. It is also brought under various sections under the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Cap 301. He seeks the following orders:-

- 1. That the Honourable Court do certify this matter urgent and dispense with first service.***
- 2. That Honourable court do grant leave to apply for stay of the proceedings orders issued on 23rd September and 20th January 2011 by Chairman of Business Premises Rent Tribunal at Nairobi set aside until this application is heard and determined.***
- 3. That this Honourable Court do declare or nullify the orders issued on 23rd September 2010 in Misc. Application No. 9B of 2010 as null and void as were set aside by order of 1st July 2010 in***

Tribunal filed reference No. 29/2010 and were illegally or wrongly issued after this Honourable Court issued orders of High Court Misc Application No. 145 of 2010 with orders of 19th October 2010.

4. That the Honourable Chairman lacks jurisdiction to entertain two references to take effect on the same premises and therefore this Honourable Court do declare as res judicata matter.

At first I would wish to deal with the respondent's deposition in its replying affidavit that Kungu had adopted unknown procedure in moving the court by way of Notice of Motion. Although the respondent in making that deposition did not elaborate on what it meant it is clear that Kungu has moved the court contrary to the Civil Procedure Act and Rules. The Civil Procedure Act and its rules provide how a party can approach the court. The Civil Procedure Act under section 2 defines pleadings to "include petition or summons and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defence." With that definition in mind, I find that indeed Kungu erred to have filed this cause by way of Notice of Motion. It is unprocedural. Notice of Motion is not a manner prescribed for instituting suits. See **Board of Governors, Nairobi School – Vrs. Jackson Ileri Geta** (1999) KLR. As it will be seen from the prayers reproduced above, Kungu is seeking orders relating to actions in the Business Premises Tribunal. The Notice of Motion however is not an appeal against the orders of the Tribunal nor is it seeking judicial review orders. The Business Premises Tribunal is mandated to deal with matters that fall under Cap 301. A party that is dissatisfied with the decision of such a Tribunal can approach this court in an appeal or for orders of judicial review. The prayers above will show that that is not what Kungu seeks from this court. Further, the application itself and the affidavit in support are so muddled up ambiguous and confusing that even if Kungu had moved the court in the right procedure on merit he would not have succeeded. It has not merit whatsoever. For that reason, and for the reasons given above, the Notice of Motion dated 24th February 2011 is dismissed with costs being awarded to the respondent.

Dated, signed and delivered at Meru this 30th day of June 2011.

MARY KASANGO
MERU