



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 18 of 2009

POWERPACK HYDRUARICS LIMITED.....PLAINTIFF/TENANT/APPLICANT

Versus

JACINTA M. NDEGWA

T/A JARMAT ENTERPRISES.....DEFENDANT/LANDLORD/RESPONDENT

RULING

This is a ruling concerning the Plaintiff's Chamber summons dated 7th August 2009 and filed same date. It is said filed under Order XXXIX rules 1, 2 and 9 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The Applicant is making six substantive prayers for restraining and mandatory Orders.

When the application came up on its first interpartes hearing date, Advocates handling the matter recorded a consent to file and serve their respective written submissions to be followed by brief oral submissions.

They subsequently filed their written submissions but forgot to take date for oral submissions until the case was brought before me. Thereafter the brief Oral submissions they had promised became lengthy oral submissions. Mr. Mugambi, Counsel for the Applicant, and Mr. Njoroge, Counsel for the Respondent, presenting their respective submissions as if they were presenting evidence during hearing of the main suit.

This is a case where the Plaintiff's/Applicant's tenancy at the suit premises commenced on 1st October 1981 when a lease of five years and one month was executed between the then Landlord M/s Sam Company Limited and the Applicant. Having been registered on 23rd August 1983 the said lease came to an end on 31st October 1986.

But the Applicant did not vacate the premises. There is a dispute whether he thereby became a month to month tenant under the Landlord and Tenant (Shop, Hotel and Catering Establishments) Act (Cap 301) Laws of Kenya.

The Defendant/Respondent subsequently bought the premises and the Applicant says that by that time he was paying a monthly rent of Kshs.45,000/= but it appears that immediately thereafter the Applicant disagreed with the Respondent as to the amount of monthly rent to pay. First the rented space was reduced. Secondly there followed a notice to increase rent.

The parties took their dispute to the Business Premises Rent Tribunal starting with Tribunal Case No. 20 of 2009. Eviction of the Applicant followed during which some goods belonging to the Applicant are said to have been carried away by the Defendant's agencies, M/s Prodigy Commercial Agencies.

The Applicant says all that was done unlawfully but the Respondent does not accept those allegations.

The parties came to this court and have therefore been moving several times between the Tribunal and this court and the ping-pong journey is still continuing to date.

It was at some point in that journey that on 18th February 2009 Justice Waweru recorded a consent of the parties to go back to the Tribunal which thereafter seems to have made some orders on the basis of which the eviction and attachment complained of by the Applicant was undertaken. The parties are back in this court concerning orders prayed for in the Chamber Summons, to add to the orders already obtained from this court, consistent or inconsistent.

Attachment and eviction already done. In granting the orders prayed for in this Chamber Summons, the Applicant wants the court to say it is because the eviction and attachment were unlawful while at the same time the Respondent is saying there was nothing unlawful. Better evidence needed.

The main suit is yet to be heard and the parties may again go back to the Tribunal. Important issues canvassed before me during the hearing of this Chamber summons need evidence from witnesses in a witnesses box and it is sometime now since the alleged eviction and attachment took place. In the circumstances I should not be made to decide the main suit in this matter on the basis of this chamber summons.

Accordingly, Chamber Summons dated 7th August 2009 be and is hereby dismissed.

Each party to bear its own costs of the Chamber Summons.

Dated this 19th day of March 2010.

J.M. KHAMONI

JUDGE

Present:

Mr. Mugambi for the Applicant
Mr. Njoroge for the Respondent
Court Clerk: Kabiru