



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

Civil Case 643 of 2009

JENIFFER NDILA MUASYA PLAINTIFF

VERSUS

**SAMUEL NGUGI NGANGA..... DEFENDANT
HANNA NGUGI..... DEFENDANT**

RULING

The plaintiff in this suit filed a chamber summons dated 27.11.09 under Order 39 Rules 1, 2 Civil Procedure Rules and Section 63 (e), 3A Civil Procedure Act for an order that:

1, a temporary injunction issue against the defendants restraining them from evicting here from a house part of property LR No. C-130 UMOJA 1 ESTATE NRI.

The reasons given were that the plaintiff was monthly tenant of the 1st defendant and she had paid all rents up to date. She therefore was entitled to a valid notice from the 1st defendant as the landlord if the tenancy had to be terminated. That instead she was given a 12-day termination of tenancy notice by the 2nd defendant in the middle of the tenancy period.

During arguments incorporating contents of the plaintiff's supporting affidavit Mr. Mayamba, posited that the notice in question was served on 18.11.09, taking effect on 1.12.09. It was exhibited. It was signed by the 2nd defendant whom the plaintiff considered a stranger to the oral tenancy agreement she entered into with the 1st defendant. To the plaintiff, the 2nd defendant was not a co-owner in the property and neither was she an agent of the 1st defendant. While referring to the replying affidavit on which Mr Kamau relied to oppose the application, the court heard that therein it had been deposed to that the 2nd defendant was the wife of and a co-owner in the property and with that she had issued the notice to vacate. It was admitted that the plaintiff paid rents to one Peris Waiganjo, the 1st defendants' agent at sh. 7500/= pm and that even after the said notice, which the plaintiff considered invalid for having been issued by a stranger, the 1st defendant, had continued to receive rents thereby waiving the effect of the said notice. That the plaintiff was entitled to a valid and ample notice from the 1st defendant if he was minded to have her out of the premises.

Mr Kamau found the pleadings and arguments by the plaintiff less than candid. It was claimed that the plaintiff knew that the two defendants were husband and wife and co-owners of the house no. C- 130 at Umoja. More than ample notice of 3 months was given to the plaintiff even as she was a monthly tenant, and so she should quit the premises. She had not refuted with another affidavit the fact that she knew that the 2nd defendants were co-owners of the subject house and accordingly the 2nd defendant properly issued the notice in question. Reference was made to a certain resolution made by the defendants, about this house and that the plaintiff knew of it. None was exhibited, though. And further, that since serving of the notice on 18/11/09, it had taken the plaintiff 10 days to bring this application. The court was urged to refuse the orders sought on the basis that the plaintiff was not a candid party deserving the discretionary order of injunction.

The tenancy agreement herein is agreed to have been oral. The plaintiff claims that it was between her and the 1st defendant, so that if any notices were to issue under it to quit, only the 1st defendant, could issue them. That the 2nd defendant was a stranger to the said oral agreement and so she was incompetent to issue any notices under it. It is not in dispute that the 2nd defendant issued the notice in dispute.

In the circumstances, that is a triable issue and the plaintiff has made out a prima facie case by impeaching the competency of the 2nd defendant to issue notices involving an agreement she is not a party to.

Accordingly prayers (b) and (c) of the chamber summons are granted. As commented on earlier, this suit to be moved to the lower courts (at Milimani) to hear and finally determine.

Orders accordingly.

Delivered on 12/3/10.

J. MWERA
JUDGE