



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Case 52 of 2010
RAFIKI SPARES (2003) LIMITED.....PLAINTIFF
=VERSUS=
THE REGISTERED TRUSTEES OF
MOI UNIVERSITY PENSIONS SCHEME.....DEFENDANT**

R U L I N G

I. Background:

1. The Plaintiff was originally a tenant in the Defendant’s premises Eldoret/Municipality block 7/80. The Defendants requested the Plaintiff to vacate the Premise in order to carry out renovations. This renovation was indeed carried out and completed.
2. A new lease and or terms of occupation of the premises was given to the tenant. They instead came to Court and filed this suit on the 7th April, 2010 seeking orders that they are still tenants; that a mandatory injunction be put in requesting the Court to install them once again into the premises. By an application of 1st April, 2010 filed on 7th April,2010 the Plaintiff tenant sought for orders restraining the said landlords from leasing out the premises where the Plaintiff had originally occupied. Further mandating orders were sought.
3. The Defendants were served but they did file their papers out of time without leave of the Court.
4. The procedure would be that the respondent would file an application by way of Notice of Motion under order L r I CPR seeing leave to file the replying affidavit out of time. That a draft application would be annexed to the said application that would be deemed to have been filed if granted.
5. The hearing of this application was undertaken exparte.

II. Opinion

6. From the annexures attached to the application. The Defendants made an offer dated 24th November 2009 to occupy the premises at a rent of 65,000/= per month. This was accepted on 30th November 2009 and a two months rent cheque made out of Kshs 130,000/= was drawn. The said cheque was then withdrawn and returned back to the tenant. It therefore followed with a letter of 19/3/2010 that the board rejected the Plaintiff/applicant as a tenant despite his being in the premises since 1995. the Plaintiff tenant wants redress in this Court.
7. This Court finds that the Plaintiff/applicants whom were alleged to have been in occupation of the premises since 1995, and whom were asked to leave the premises and did so on understanding that they would return to the same premises. That they were actually offered a new arrangement to return to the lease premises. It is hereby noted that the Plaintiff has a right to seek redress in this Court.
8. The Orders of the Court would be that there be an injunction to issue against the Defendant restraining them from renting out the actual space on the premises Eldoret Municipality block 7/80 until the determination of this suit.
9. Obiter dictum – documents/letters marked “without prejudice” are not to be used in proceedings before court unless agreed to by parties.
10. I award costs to the Plaintiff/applicant.

DATED THIS 21ST DAY OF APRIL, 2010 AT ELDORET.

.....
M.A. ANG’AWA
JUDGE

(i) D.K.N. Magare, Advocate instructed by the firm of M/s Magare and Co. Advocates for the Plaintiff/Applicant - Present

(ii) J.M. Mburu instructed by the firm of M/s Mburu Maina & Co. Advocate for the Respondent - Present