



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

CIVIL CASE NO. 85 OF 2010.

ELIUD

WANYAMA.....PLAINTIFF.

VERSUS

**KENYA PLANT HEALTH INSPECTORATE SERVICES
(KEPHIS).....DEFENDANT.**

RULING

1. The plaintiff who is also the applicant filed this suit on the 13th October 2010. He is seeking principally for an order of permanent injunction to restrain the defendant from evicting him or interfering with his peaceful occupation of the suit premises. The plaintiff also seeks for general damages for loss of business due to a purported illegal closure of his business. This suit was filed together with a chamber summons application which is brought under the provisions of Order XXXIX rules 1, 2, and 3 of the civil procedure rules. The applicant is seeking for an interim order of injunction to restrain the defendant from locking the plaintiff's rented premises or denying him access or quiet enjoyment of the premises until the hearing and determination of this matter.
2. This application is predicated on the grounds stated on the body of the application and the matters deposed to in the supporting affidavit sworn by the plaintiff on 13th October 2010. According to the plaintiff, he became a tenant of a business premises where he runs a business popularly known as Top Station along Kitale- Eldoret road under the name and style of Mary's Joint. It is contended by the plaintiff that he is a monthly tenant at a sum of ksh 800/= since June 1989. He claims that the premises were meant for a staff canteen for the staff of Agricultural Research Institute and members of the surrounding community. However there was a change of management in January 1999, when the plaintiff received a letter informing him that rent should be paid to the defendant.
3. The defendant issued the plaintiff with a notice to terminate the tenancy vide a letter dated 5th July 2010. Being aggrieved with that notice, the plaintiff filed a reference before the Eldoret Business Premises Rent Tribunal Case No 32 of 2010. That notice was duly served upon the respondent and it is still pending determination. However it is alleged that the defendant purported to close the plaintiff's premises by using heavy chains to lock the gate and prevent customers and motor vehicles from gaining access in the plaintiff's premises. Counsel for the plaintiff argued that the plaintiff has established a prima facie case with a probability of success because there is a reference pending before the business premises Tribunal. It is the tribunal to consider whether the defendant is not subject of the provisions of the Cap 301 being a state corporation.

4. The defendant Regional Manager wrote to the plaintiff giving him notice to vacate the premises thus the plaintiff was recognized as a tenant. Moreover, the plaintiff premises is duly licenced by the Kitale Municipal Council to carry on the business of a restaurant and a bar. The plaintiff is also in possession of the premises and he should be granted interim orders to preserve the status quo.

5. This application was opposed. The defendant relied on the replying affidavit sworn by James Osando, the managing director of the defendant corporation sworn on 25th October, 2010. It was submitted that this application does not meet the traditional grounds for granting an interim order of injunction because this court can only exercise appellate jurisdiction to determine a matter of an alleged tenancy agreement. This is as provided for under section 15 of Cap 301. The applicant moved the tribunal then abandoned the proceedings before the tribunal and filed a fresh suit in the High court which is an abuse of the court process. It was argued that the tribunal is sufficiently clothed with powers under section 12 to make any orders including a stock order of eviction or give any directions it deems necessary regarding a matter pending before a tribunal. Moreover, landlords are allowed to terminate a lease under the provision of section 7 of Cap 301 especially where the landlord intends to demolish the premises he can seek to repossess the premises. In this case the suit premises is public land which belongs to a state corporation and the objective is for the coordination of all matters relating to plant, pests and disease control and to educate public on related matters to generally include agricultural. The land is set aside for research activities which cannot co-exist with the plaintiff business of running a bar which is open to members of public late in the night.

6. The applicant has always known that the defendants require to repossess the land for public utility. The defendant has not breached any provision of the law although the applicant is seeking for an equitable relief and claims to be a tenant he has not shown to whom he has been paying rent for about 8 years and since he has been in default of paying the rent he cannot come before the Court of Equity and enjoy equitable orders.

7. This application seeks for an order of injunction while it is acknowledged by both parties that there is a suit pending before the Business Premises Rent Tribunal at Eldoret case No. 32 of 2010. Perhaps the 1st issue for me to determine is whether this court can engage in a parallel process to determine this application while there is a reference pending under the provisions of Cap 301 before the tribunal. The second issue to determine is whether the applicant has established a prima facie case with a probability of success and whether irreparable harm which cannot be compensated for in damages would arise. If there is any doubt, the court should then proceed to determine the matter on a balance of probability.

8. According to the defendant, the plaintiff is illegally occupying public land that is meant for the development of agriculture and research. The plaintiff has been resisting notice to vacate the public property. On the other hand, the plaintiff claims to be a protected tenant and the premises is a controlled tenancy under the provision of Cap 301. That may very well be so and it is the tribunal that should determine whether there is a tenancy. It is not worthy that the defendant has raised an objection that under the provisions of section 2 (1) the proviso thereto provides that:-

“Provided that no tenancy to which the Government, the Community or a local authority is a party, whether as landlord or as tenant, shall be a controlled tenancy.”

9. The above is a valid concern raised by the defendant which will have be determined by the tribunal. Another valid point raised by the defendant is whether the plaintiff abandoned the proceedings before the tribunal and engaged this court with parallel proceedings which is tantamount to an abuse of the court process. I am of the view that the tribunal that is seized of the issue of tenancy should determine all the disputes concerning the subject tenancy. I have gone through the provisions of section 12 of Cap 301 and I agree with counsel for the defendant that the tribunal has sufficient powers to make any orders especially the provisions of section 12 (4) which provides as follows:-

“In addition to any other powers specifically conferred on it by or under this Act. A Tribunal may investigate any complaint relating to a controlled tenancy made of it by the landlord or the tenant, and may make such order thereon as it deems fit.”

The jurisdiction of this court was not properly invoked. This application ought to have been filed before the tribunal. On the merit of the application, the plaintiff claims to be a controlled tenant whereas the defendant claims that the applicant is in illegal occupation of public land which is meant for public utility and the business premises occupied by the plaintiff is inconsistent with the objectives and purposes for which the land is meant for. Although the plaintiff claims to be a tenant he has not attached any receipts for payment of rent for the suit premises. The plaintiff has not been able to show that its interest of running a business premises on a parcel of land meant for public utility overrides the purposes meant to be served by the defendant. Accordingly, the plaintiff's case does not leave the threshold of granting an injunction. It is hereby dismissed with costs to the defendant.

Ruling read and signed on this 16th December, 2010.

MARTHA KOOME.

JUDGE.