



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

Civil Case 50 of 2008

1. Land and Environmental Law Division
2. Subject of main suit:
 - a) Landlord Tenant
 - b) Business Premises Rent Tribunal
 - c) Increase of rent
 - d) LR209/2362 – Town House
3. Subject of application Injunction
 - Land 21.2.08
 - Filed 22.2.08
 - a) Injunction to restrain landlord from levying distress
 - b) Rent be deposited with Business Premises Rent Tribunal
 - c) OCS central police to protect applicant/tenant
4. Reply – Nil – respondent served – absent
5. Held: Injunction to issue till determination of main suit.

Obiter dictum rule requiring whether any case exists should include complaint reference number of Business Premises Rent Tribunal before reference is filed.

6. Case law

- a) Caledonia Super market Ltd v Kenya National Examination Council

(2000) 2 EA 357

7. Ripples case

8. Advocates:

E.O. Nyangenan of Ogoti Nyangena & Co. Advocates for the plaintiff/applicant

C.O. Wairoma of Wairoma & Co. Advocates for the defendant/respondent

DAVID WAMANDAPLAINTIFF

VERSUS

JOANINA WANJIKU MAINADEFENDANT

RULING

I: Procedure

1. The relationship between the defendant Joanina Wanjiku Maina and the plaintiff David Wamada is that of Landlady/Tenant.

2. The Suit Premises in dispute is Town House LR209/2362 where the plaintiff has rented offices from the defendant. She is a new landlady who refused to accept the old rents through her agents but instead is alleged to demand an increase of rent. The tenant filed this suit seeking orders of injunction to restrain the defendant from increasing the said rent.

3. The tenant further alleged that he is a protected tenant under the Landlord, Tenant (Shop Hotel and Catering Establishment) Act Cap.301 Laws of Kenya. Namely no increase of rent should be levied without the permission of the Business Premises Rent Tribunal. He therefore seeks this courts protection.

4. It is only the Business Premises Rent Tribunal which has jurisdiction to hear disputes between Landlord and Tenant concerning commercial premises.

5. The law permits a tenant to seek orders of injunction against a landlord and or vice versa but this is obtained only at the High Court of Kenya. The reasons being that the Business Premises Rent Tribunal has no jurisdiction to issue injunctive orders. In the case law of Caledonia Supermarket Ltd v Kenya National examination Council (2000) 2 EA 357 (Kwach, Shah, Okubasu JJA)

A case where a landlord threatened to unlawfully terminate a tenancy, it was held that a tenant may and can apply to the High Court for an injunctive relief. This holding had been followed in the case law of

Tiwi Beach Hotel Ltd V Julian Ulrike Stamm (1990) 2 KAR 189

6. The plaintiff is therefore in the correct court. I would nonetheless note that within the plaint the plaintiff must state that there is “pending” a complaint reference that has been filed in the tribunal between the parties on the issue of the increase of rent.

II: Application dated 21.2.08.

7. The plaintiff on filing this suit filed an application for injunction to restrain the defendant from levying distress or evicting him out of the premises. He prayed that his rents be deposited with the Business Premises tribunal and that he be given police protection from central police station.

8. Temporary orders had been granted by the duty judge

Kihara Kariuki J who also made further orders to deposit the rents in court.

9. The application came before the Land and Environmental Law Division for inter parties hearing.

The defendant having been served failed to put in a replying affidavit or file grounds under order Lr 16 Civil Procedure Rules.

10. In his arguments the tenant claimed that the defendant merely purchased the said premises. He was then asked to increase the rent. His cheque were being returned unpaid by the Landlady. The likelihood of being distressed for rent was high.

11. The apprehension that the tenant has that by the Landlady's action of rejecting his rents on grounds of wanting a higher rent is prima facie that injunctive orders may issue to protect the tenant This is even so where the tenant alleges he is covered under the Business premises Tribunal.

12. He has now deposited the rents in court as per Kihara Kariuki J's orders.

13. I would accordingly grant the orders for injunction as to the protection of the police officers. I would refer to the Rippels case (Kwach JJA) where in Civil matters the police should not be used but court Bailiffs to executive the courts orders. The work of the police is only to ensure that there is no breach of the peace.

14. The application is hereby granted with costs to the defendants on prayer No.2. The orders of injunction to remain in force till the finalization of this suit.

DATED THIS 5TH DAY OF MARCH 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

E.O. Nyangenan of Ogoti Nyangena & Co. Advocates for the plaintiff/applicant

C.O. Wairoma of Wairoma & Co. Advocates for the defendant/respondent