



**REPUBLIC OF KENYA**

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

**Civil Case 112 of 2008**

**WESTLANDS TRIABLE PROPERTIES LIMITED .....PLAINTIFF**

**VERSUS**

**WESTLAND SUNDRIES LIMITED .....1<sup>ST</sup> DEFENDANT**

**MEAT MASTERS LIMITED .....2<sup>ND</sup> DEFENANT**

**DO IT YOURSELF LIMITED .....3<sup>rd</sup> DEFENDANT**

**RULING**

**APPLICATION DATED 19 MARCH 2008**

**CHAMBER SUMMONS, SEEKING INJUNCTION**

**1: PROCEDURE**

1. An injunction was sought against Westlands Sundries Limited Meat Masters Limited

And Do it Yourself Limited Being the defendant 1, 2 and 3 respectively by M/s Westland's Triangle Properties Ltd the plaintiff herein that:-

“i) A temporary injunction to issue restraining 1,2 and 3 defendants, their servants or agents or workmen or otherwise however from entering, using or remaining in spares at the plaintiffs suit premises LR No.209/6368/4 pending the determination of this suit.

Further

ii) The proceeding commenced by References to the Business Premises But Tribunal by defendant 1,2 and 3 respectively on 23 February 2008 as Tribunal reference 111,112 and 113 of 2008 be stayed pending the determination of this suit.”

2. The plaintiff came to court during the court vacation and was directed to serve the defendant 1,2 and 3 Wendoh J (20.3.08) and be heard on 9 April 2004. The file was placed before the Land and Environmental Law Division when parties sought time to confirm the tenancy of defendants 1, 2 and 3 claiming to be thereon in 1970,1976 and 1977 respectively and to prepare for the Preliminary Objection on the issue of this courts jurisdiction.

3. On 24 April 2008 being dates correct both parties, the hearing of the main application was commenced with the issue of the jurisdiction of the court being taken up in reply by the respondent.

## **II: Background of the application.**

4. The matter concerns land parcel LR209/6368/4, IR21827/1 0.4391 hectare land survey plan No.87212. The suit premises a building and land was registered originally in the name of Agip Ltd (7 September 1970) under the Registration of Titles Act Cap.281. Agip Ltd changed its name to Agip Properties Kenya Ltd (12 October 2000). It leased the property to Westlands securities for 40 years. The name of Agip Properties Kenya Ltd was changed to Westlands triangle Properties Ltd. I mention this as the defendant herein deny that the latter is the registered owner of the suit premises. This is subject of evidence in a trial.

5. The affidavits deposed to by both parties clearly bring out the undisputed facts that M/s Westland securities Ltd leased out portion of the premises to one George Njau Mwarigu (23.12.1977). He passed away and his beneficial interest was transferred to Rosemary Wanja Njau (10.7.2000).

6. Unknown to the plaintiff M/s Westlands Triangle Properties Ltd, the said Rosemary Wanja Njau sub-leased the property to:-

i) Westlands Sundries limited

ii) Meat Master Limited

and iii) Do it You Self Limited.

(The 3 defendants herein).

7. According to the terms of the lease entered into with Westlands Securities Limited in the 1960's for 40 years it was to expire and come to an end in 2008. Rosemary Wanja Njau was aware of this and on being notified surrendered the said lease in 2007. She gave notice to her sub tenants a year in advance and notified them that "if they so wish, they may deal directly with the plaintiff as head lessor "to extend further their tenancy".

8. The defendant 1,2 and 3 declined to give vacant possession nor deal with the plaintiff on any new rents or new tenancy on the lease agreement.

9. The defendants 1,2 and 3 through their advocate filed a reference with the Landlord and Tenant (Stops, Hotel and Catering establishments) Act Cap.301 Laws of Kenya, Tribunal known as the Business Premises Rent Tribunal (herein referred to as the BPRT).

10. This reference was filed 117/08. The plaintiff herein filed his suit on 19 March 2008 together with an application for an injunction which basically sought to have the three defendants evicted from the suit premises.

11. The reasons for the defendants, going to the BPRT tribunal was because the plaintiff declined to accept rent.

12. The parties went to the tribunal and stayed all the three suits and came before this court seeking the orders for injunction by the plaintiff and resistance being rent by the defendant.

### **i) Arguments by plaintiff/applicant**

13. The plaintiff applicant argued that the three defendants were sub-tenant without their knowledge. It was part of the agreement with George Njau Mwangi that the said property was not to be sub-let, charged transferred sold or part with possession or occupation. There was therefore a breach of this

agreement. As a result the sub-tenants are illegally occupying the premises and should not be protected by the BPRT tribunal.

14. An injunction restraining the defendants from remaining on the premises (really a mandatory injunction to evict the said defendants) was asked to be issued. That the tenants tribunal cases be terminated for lack of jurisdiction.

15. The plaintiff applicants field the authorities:-

**Pritam v Ratilal & Another**

(1972) EA 560

And **Harman Singh & Others v Mistri**

(1971) EA 122

Whereby the former case held that there must be a control tenancy before provisions of the act can apply whilst the latter case held that after an action of possession has been filed reference to the tribunal the court has power to stay proceeding.

ii) **In reply by defendants/ respondents**

16. The defendants respondents in reply relied on statute and case law. Under the Landlord and Tenants/Shops, Hotels and catering Establishments, Act cap.301 Laws of Kenya Section 5(1) it protects the sub-tenant.

**“Where a landlord is himself a tenant, the termination of the landlords tenancy shall not of itself terminate a controlled sub-tenancy but for the purpose of this act the person entitled to the interest in reversion expectant on the termination of the land lords tenancy shall be deemed to be the landlord of the controlled sub-tenancy upon the terms and conditions thereof and subject to the provisions of this act.”**

17. It was not disputed that Rosemary Wanja Njau’s lease was terminated on its being expired. The above section though, protects her sub-tenants. The defendants therefore alleged that they never entered into any agreement with the plaintiffs, nor did they know the plaintiffs as landlord. The tenants entered into an agreement with Rosemary Wanja Njau. They were on the premises since 1971, 1979 and 1976 respectively. A dispute arose as to the rents payable. The parties submitted themselves to the jurisdiction of the BPRT and were assessed their respective rents due and owing.

18. Under the act, the tenants are defined as tenants. The interpretation of the act refers tenants to include sub-tenants. They fall under this category. Thus, under section 5(1) (quoted above supra) their sub-tenancy which is controlled cannot be terminated.

19. The respondents advocate relied on the case law of **Caledoma Super Market v Kenya Examination Council (2002) 2 EA** 351, in which a tenant is protected. If eviction is to be effected the procedure of so doing lies under the Business Premises Rent Tribunal Act Cap.301 Laws of Kenya.

20. This court therefore has no jurisdiction to entertain the suit before court.

**II: Opinion**

21. This matter is at an Interlocutory stage Evidence is yet to be taken down and proved at a trial. Affidavit nonetheless are evidence to establish acts required in by the courts.

22. In the case law of Nairobi Housing Development Ltd v High ridge Corner Bar Ltd 1979) IEA 108

**“[Where] a landlord serves a notice to grant under the Landlord and servant (Shops Hotel and Catering establishment) act on his tenant and also on a sub-tenant whom he describes as an “unlawful sub-tenant” the named sub-tenant is entitled to refer the matter to the business premises rent tribunal and the tribunals jurisdiction is not ousted by the mere allegation of illegality mandatory the landlord.”**

23. The plaintiff in this case claim that all the three defendants are illegal sub-tenants. The law states otherwise. That whether they are illegal or not the plaintiff is subjected to the jurisdiction of the Business Premises rent Tribunal to determine this issue.

24. The sub-tenants were able to show that they had dealing with the landlord they knew Rosemary Wanja Njau whose tenancy had since expired. That was sufficient evidence to prove that they are protected tenants.

25. I would wish to mention that if the sub tenant held a lease of 5 years and 3 months, taking them out of the ambit of the tribunal, then there would not have been any control under the tribunal. In this case the defendants relationship with the former landlord appears to have been controlled. They were so heard at the Tribunal.

26. I accordingly ruled that the application for injunction and orders to stay the tribunal cases be and is hereby rejected. I order that this High court case be stayed. That the proceeding before the Tribunal in case 111/08,112/08 and 113/08 commence for hearing.

27. I award costs to the respondents/defendants.

**DATED THIS 30<sup>TH</sup> DAY OF APRIL 2008 AT NAIROBI.**

**M.A. ANG’AWA**

**JUDGE**

**N. Thuku led by S. Mwenesi instructed by M/s S. Musalia Mwenesei & Co. Advocates for the plaintiff/applicant – present**

**M.M. Issa instructed by M/s Issa & Co. Advocates for the defendants/respondents- present**