



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

**Misc. Appli. 393 of 2008**

**UNION EAST AFRICAN TRUST LIMITED.....APPLICANT**

**Versus**

**BUSINESS PREMISES RENT TRIBUNAL.....RESPONDENT**

**BELLTON AGENCIES T/A P.M. INTERNATIONAL.....INTERESTED PARTY**

**RULING**

The Notice of Motion dated 23<sup>rd</sup> July 2008 is expressed to be brought pursuant to Order 50 Rule 1 (1) of the Civil Procedure Rules, Section 3 A Civil Procedure Act, Order XB Rule 8 and Section 4 (1) (2) 5, 12 (1) (4) of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act Chapter 301 Laws of Kenya. The applicant Union East African Trust Ltd. prays that an order do issue setting aside the leave granted to the ex parte Applicant to institute Judicial Review proceedings acting as a stay of the Business Premises Tribunal's order dated 6<sup>th</sup> June 2008 and in the alternative the court do find that the Business Premises Tribunal had jurisdiction to hear the Reference filed as No. 334 of 2008 and that costs be provided for.

The application is based on grounds found in the body of the application and an affidavit sworn by Mohamed Kikuji who describes himself as an applicant. The application was opposed and Simon Warui an employee of Gimco Ltd., which manages the property in LR 209/907 which is at the centre of this controversy in this Judicial Review Application, swore an affidavit in reply. A brief background to this case is that on 2<sup>nd</sup> July 2008, the ex parte Applicant Union East African Trust Ltd sought leave of the court to commence Judicial Review proceedings and that the leave do operate as stay of the ruling of the Business Premises Rent Tribunal made on 6<sup>th</sup> June 2008. The court granted leave and the same was to operate as stay for 45 days. It is this order of stay that the Applicant/Interested Party is challenging.

Before I even consider the merits of the application, I have looked at the application as presented before me and I am of the view that this court's jurisdiction has not been properly invoked for the grant of the orders sought. The substantive motion herein is a Judicial Review application. Judicial Review is a special jurisdiction. The Court of Appeal in interpreting S.8 of the Law Reform Act in the case of **KUNSTE HOTEL LTD. V COMMISSIONER OF LANDS CA 234/05** said that it is a special jurisdiction to which neither the Government Proceeding Act nor the Civil Procedure Act and the Rules made there under apply. Section 8(1) of the Law Reform Act which provides the substantive law on Judicial Review provides that when exercising Judicial Review jurisdiction the court is neither exercising civil or criminal jurisdiction. The Court of appeal reiterated that fact in **R V COMMUNICATION COMMISSION OF KENYA CA 175/00** when it found that Order VI of the Civil Procedure Rules does not apply to Judicial Review. In the instant case, this court has been moved under Order 50 Civil Procedure Rules, Section 3 A Civil Procedure Act and XB Rules 8 and Section 4 of the Business Premises Act. None of the above provisions apply to Judicial Review proceedings. Order 53 Civil Procedure Rules does not provide for setting aside of any order and the Court should have been moved under its inherent jurisdiction under Order 53. The Applicant does not therefore deserve the orders sought without moving the court appropriately. Rules of procedure are put in place to maintain some order and have to be substantially complied with. For the reason that the court has not been properly moved, it will not consider the merits of the present application and the same is for striking out.

This court also has problems with the affidavit filed in support of the application. It is sworn by one Mohamed Kikuji of Box 14403 – 00100 who describes himself as the Applicant. At paragraph 6 he describes himself as a subtenant. However, looking at the Notice of Motion dated 4<sup>th</sup> July 2008 the parties are the **Republic versus The Business Premises Tribunal (the Respondent) ex parte Union East African Ltd. (the Applicant) and Bellton Agencies T/A PM International – the (Interested Party)**. There is nobody by name of Mohamed who is a party and the affidavit seems to have been sworn by a stranger to these proceedings. No order would be granted to a stranger to proceedings.

For the above reasons and so that this person is not locked out if he makes good his application, the same is struck out with the Applicant bearing the costs.

Dated and delivered this 19<sup>th</sup> day of September 2008.

R.P.V. WENDOH

JUDGE

Present:

Mr. Madana for Applicant

Mr. Muthui holding brief for Watende for Respondent

Elizabeth: Court Clerk