



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**Misc. Appli. 7 of 2007**

**PETER NJIRU NJAGI.....APPLICANT**

**VERSUS**

**FELISTUS WAMBUI KATHARA.....RESPONDENT**

**RULING**

On 15/1/2007 the Landlord approached the court with an ex parte application seeking orders for breaking premises on plot No. 11 Embu Municipality. He made allegation in his affidavit that he had instructed Advocate to levy distress against the property of the tenant. That the tenant closed the premises to avoid attachment and therefore he needed breaking order to continue with attachment. The landlord exhibited photographs showing that the premises were locked. There was no mention of Tribunal proceedings taken in Business Premises Tribunal by the tenant. After the orders were granted and goods taken by auctioneer. The tenant came to court by Notice of motion dated 9/2/2007 praying that the order granted on 31/1/2007 be set aside together with proclamation against goods. The tenant stated that the orders granted on 31/1/07 were obtained through material misrepresentation of facts and falsehoods by the landlord which did circumvent orders of Tribunal given on 26/1/2007 restraining the Landlord from harassing the Tenant. This court heard the application Ex parte and invoked the inherent powers of court to set aside orders of 31/1/2007. The matter has come today for hearing inter-parties.

I have considered the submissions of Mr. Muturi for Applicant Tenant. I have also considered submission made by Mr. Njue for Landlord. I find that orders complaint of were granted and obtained by concealment of material facts. I am convinced by the argument of the Tenant that it is not true that the Tenant had vacated the premises as alleged by the landlord. At that time she had already filed complaint to the Tribunal and from what her Counsel says she had obtained orders on 26/1/2007 against the landlord. In short she had filed suit against landlord and it is unbelievable that she would voluntarily vacate the premises while her suit is tribunal.

I believe what she has stated in her sworn affidavit. The Counsel for tenant says that the Tribunal proceedings are still in progress not terminated yet.

I have to emphasize that the jurisdiction to settle the disputes in Business Premises is entrusted by Parliament to Tribunal established under Cap. 301.

In the premises I allow the application by tenant dated 9/2/2007 with costs to tenant applicant. Thus I confirm the order I granted on ex parte basis. This dispute must be dealt with in the Business Tribunal where there is already a suit filed.

Orders accordingly.

29<sup>th</sup> Jan2007

**J. N. KHAMINWA**

**JUDGE**