



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

**Civil Case 482 of 2007**

1. Land and Environmental Law Division
2. Subject of main suit: Land Lord Tenant
  - i) Residential premises
  - ii) Related suit Hccc834/06 subject of suit
  - iii) Landlord/tenant dwelling house
  - iv) Rent arrears
  - v) Distress of rent
  - vi) Dispute on account on moneys paid
3. Application 7 August 2007

a) By defendant

Court to stay suit and or consolidate suit with Hccc834/06

4. Application 14 August 2007
  - b) By plaintiff for summary judgment to evict the defendant only from the suit premises.
5. As ruling related and heard one after the other – consolidated ruling be delivered.
6. Held:
  - i) That suits be stayed
  - ii) That summary judgment for vacant possession be by way of formal proof.
7. Case law

a) Gussin Mwalimu Investment Co. Ltd & Another v Mwalimu Hotel Kissi Ltd.(1995 – 1998) 2 E.A.100

b) Raphael Mitau Kanglai & Another v Kilonzo Kingalya & Another

Hccc473/85, (Ang'awa, J).

c) Landeco Ltd v Gregory Program

Hccc900/06 (Ang'awa,J.)

8. Advocate:

J. Rach for Rach & Co. Advocates for the plaintiff/applicant – present

C.C. Kimei holding brief for B. Isindu of Burton Isindu & Co. Advocates for the defendant/respondents

**GUT VENTURES LIMITED.....PLAINTIFF**

**VERSUS**

**HASMUKH SUMARIA.....DEFENDANT**

**RULING**

I: i) Application 7 August 2007

seeking stay of proceeding of this suit Hccc482/2007 on grounds that there is already a suit existing between the parties being Hccc834/06

ii) Application 14 August 2007 seeking summary judgment against the defendant/tenant and in effect eviction.

II: Background of the two application

1. Gut Ventures Limited, is a Limited Liability company which owns a building erected on Land Reference number 209/3007/3 Westlands. They are in effect the landlords to the said premises. The plaintiff and others not in this case are plaintiff and others not in this case are tenants to the said plaintiff.

2. On the 31<sup>st</sup> July 2006, the parties known as seven tenant namely being:-

i) Hasmukh Sumaria

ii) J.P. Chavda

iii) Suryakant Sanghrajka

iv) Mohamed Osman

v) Jayesh Jayatlal t/a Mulchand brothers

vi) Ramesh Kharwa

vii) Harish Kharwa

Sued M/s Gut Ventures in Hccc case 834/06 seeking primarily that the issue of accounts of the rents be taken between the parties. They were threatened with distress of rent and sought this courts orders to restrain M/s Gut Venture from levying distress of rent and or interfering with their quite possession.

3. As the rents paid by the tenants are above Ksh.2,500/- per month they are not protected tenants and as such would in effect negotiate on their own, without the supervision of the Rent Restriction Tribunal.

4. Any dispute between the parties would therefore require to be filed in the High Court not the tribunal

5. This suit has been before six High Court Judges and the Deputy Registrar where the party partially entered into a compromise namely, that rents deposited in court be released to the landlord and arrears/accrued rents paid.

6. One of the Hon. Judges delivered a ruling, whereby, he stated there was in effect rent arrears.

7. The Landlord at once filed a fresh suit, this time against the defendant herein only Hamukh Sumaria (and the plaintiff No.1 in Hccc834/06) (who seems to be the ring leader) and sought that he be evicted from his house.

8. The advocate for the defendant filled application of

7 August 2007 and asked that this new suit be stayed till the finalization of the first suit. The advocate for the plaintiff filed summary judgment application /tenants seeking orders to evict the defendant herein.

9. I heard both application one after the other and stated I would deliver ruling on each of the application. On closer examining the two application and Hccc834/06 file before me I was under the opinion that one ruling would suffice.

10 I also noted the frustration of each party before me. They wished to be heard on the main suit but the matters had never been reached for hearing. No pre-trial conference in effect had even been conducted between the parties under their own supervision.

## II: Finding

11. Under section 6 of the Civil Procedure Act states:-

“No court shall proceed with the trial of any suit or proceeding with the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant relief claimed.

12. I did rule in the case of Landeco Ltd v Gregory Pragassa Hccc900/2006 (Ang’awa J) that a party who files a suit simultaneously or thereafter that the latter suit must be stayed pending the finalization of the former suit.

13. To this effect, the application of 7 August 2007 seeking the stay of these proceeding in this file is correct.

14. The advocate for the plaintiff herein had argued that the matter in this suit is not related to the matters that are in Hccc834/06. In his application for summary judgment in effect saw him relying on a ruling that was written in Hccc834/06 as a business for obtaining summary judgment.

15. I wish to state that when one applied for vacant possession of a tenant under the Gussi Mwalimu Investment Co. Ltd & Another v Mwalim Hotel Kisii Ltd (1975-1998) 2 EA100 relied on in the ruling of case Raphael Mutua Kangatia & Another Hccc473/85 to distinguish a trespassers and a tenant. Further to emphasis that for “a tenant [who declines] to give consent or [declines ] to give up possession, the Landlord has to obtain an order of a competent court or a statutory tribunal.”

15. In this case herein, obtaining the order of vacant possession requires formal proof by the said

Landlord. In the Raphael Mutau Kinglya case (supra) a full trial had been conducted and decree for eviction issued in 1994. Being 13 years later the application was made for orders of eviction. In such a situation the main trial was vacant possession and there was no need to rehear the suit.

16. I accordingly find that:-

- i) The application of 7 August 2007 be and is hereby allowed.
- ii) That there be stay of proceeding of this courts orders.
- iii) Accordingly the application of 14 August 2007 be and is hereby dismissed.

17. I award costs of both application to the defendant/applicant in application 7 August 2007 and defendant/respondent in application 14 August 2007.

Dated this 18<sup>th</sup> day of October 2007 at Nairobi.

**M.A. ANG'AWA**

**JUDGE**

J. Rach for Rach & Co. Advocates for the plaintiff/applicant – present

C.C. Kimei holding brief for B. Isindu of Burton Isindu & Co. Advocates for the defendant/respondents