



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Case 62 of 2006

JOSEPH O. OSEBE
PLAINTIFF

VERSUS

JERRY MAYIEKA 1ST
DEFENDANT

FREDDICK MWANGI WAMWEA (Proprietor Richnet Services)2ND
DEFENDANT

RULING

The applicant Joseph O. Osebe simultaneously with the filing of the plaint herein filed this application expressed to be brought under the provisions of **Order XXXIX Rules 1, 2, 3 and 4 of the Civil Procedure Rules**. The applicant has sought for orders against the 1st and 2nd respondents restraining them by themselves, servants and or agents from trespassing into, evicting or otherwise in anyway interfering with the plaintiff’s quiet enjoyment of the property known as **NAKURU MUNICIPAL BLOCK 4/140** pending hearing and determination of this suit.

The grounds upon which this application is predicated are stipulated in the body of the application and elaborated at length in the supporting affidavit of the applicant.

Briefly, the matters that gave rise to this dispute may be stated;

The plaintiff claims that he entered into a lease agreement with the 1st defendant on 1st March 1994 to occupy property known as **NAKURU MUNICIPAL BLOCK 4/140** (*hereinafter called the suit premises*) as a tenant. The plaintiff has since carried on a business of a hotel and catering services. When the lease expired, the same was extended for a further period of one year presumably under all the conditions contained in the expired lease agreement except for the monthly rent which was adjusted.

According to the plaintiff after the expiration of the lease, he became a controlled tenant. On 17th January 2006, the plaintiff complains that he was served with a letter purportedly issued by the 2nd defendant claiming to be the new owner of the premises requesting him to vacate the suit premises. Efforts by Counsel for the plaintiff to verify the propriety of the contents of the said letter did not receive any reply from the 2nd defendant since the notice required the plaintiff to vacate the premises, on the 1st April 2006,

he filed these proceedings. When the application came up for hearing inter partes, on 21st March 2006, an interim order of injunction was issued by consent pending the hearing of this application inter partes.

On the part of the defendant's, these facts were not controverted as there was no replying affidavit by the defendants. However on a point of law, Counsel for the defendants argued that the plaintiff had not established a prima facie case with a probability of success to entitle him to an interim order of injunction.

Secondly, there was no privity of contract between the plaintiff and the 2nd defendant and thus the 2nd defendant had no obligation to issue the plaintiff with a notice. Furthermore the 2nd defendant is a legal owner who is entitled to the vacant possession of the suit premises.

The issue for determination is the legality of the letter by the 2nd defendant requiring the plaintiff to surrender the premises by 1st April 2006.

It is plain that the lease agreement that was entered between the plaintiff and the 1st defendant expired and the parties adopted a mutually agreed form of tenancy. This suit premises being a hotel business, it is governed under the landlord and tenant (*shops, hotels and catering establishments*) Act Cap 301. Since the expiration of the lease, the suit premises fell under the purview of a controlled tenancy which under the provisions of **Section 22 (1) of the Cap 301** means "*a tenancy of a shop, hotel or catering establishment -*

a) which has not been reduced into writing; or

b) which has been reduced into writing and which –

(i) is for a period not exceeding five years from the commencement thereof."

The landlord was obliged whoever he was, either the 1st or 2nd defendant to comply with the statutory provisions under the Act. If the 2nd defendant thinks that he was not obliged to give notice, this being a controlled tenancy, he has no choice but to comply with the statutory provisions. (See the case of **Tiwi Beach Hotel Ltd - Vs- Juliane Ulrike Stamm Civil Appeal No.63 of 1990** where the Court of Appeal had occasion to determine a similar appeal regarding a notice for termination of a controlled tenancy where it was held:

"If the appellant thought that those letters were notices, I must disabuse it of that notion by stating at once that they were not in the prescribed form and consequently had no effect on the respondent's tenancy. For this reason alone the respondent was entitled to an order restraining the appellant and the judge was therefore perfectly justified in making this order."

Similarly in his case the notice issued by the 2nd defendant purportedly to terminate the tenancy is null and void as it is not in the prescribed form.

I am satisfied that the applicant's application should be allowed in terms of Prayer number 3 of the Chamber summons dated 13th March 2006.

The applicant shall also be entitled to the costs of this application.

It is so ordered.

Ruling read and signed on 26th May 2006.

MARTHA KOOME

JUDGE