



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

Misc Appli 77 of 2006

**JOHN NYAWIRA KIAMA.....1ST
PLAINTIFF/APPLICANT**

**ANN NYAKIHU KIAMA.....2ND
PLAINTIFF/APPLICANT**

**GEOFFREY GITHIACA KIAMA.....3RD
PLAINTIFF/APPLICANT**

**SAMUEL KIRUNYU KIAMA..... 4TH
PLAINTIFF/APPLICANT**

VERSUS

**NANYUKI EQUATOR SACCO
LTD.....DEFENDANT/RESPONDENT**

RULING ON A PRELIMINARY OBJECTION

1. The Preliminary Objection to the hearing of the Application dated 24.5.2006 is really very simple; that under s.18 of the Civil Procedure Act, this court has no jurisdiction to entertain that Application which in its own words seeks transfer of **“Nairobi BPRT No. 35/2006 from Nairobi Tribunal Court to the High Court at Meru for trial and determination”**.
2. I heard both advocates for the parties and with tremendous respect for counsel appearing for the Applicant, he failed to understand the Preliminary Objection and had no serious answer to it. The issue of the nature of the dispute between the parties and whether the Business Premises Rent Tribunal or the High Court had jurisdiction over the matter was irrelevant to the issues raised in the Preliminary Objection.
3. I have also perused the authority submitted by the Advocate for the Applicant i.e. Reuben Muli Musyoki vs. Wayua Mutisya Kinothy and another C.A. 3/2002 and it has nothing to do with the issues at hand. The suit, subject of that Appeal was filed in the High Court and was premised on a notice properly issued under the provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301. It has nothing to do with powers conferred on the High Court under section 18 of the Civil Procedure Act.

4. Having so said, I must revert back to the Preliminary Objection and should begin with s.18 of the Civil Procedure Act. That section provides as follows: -

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

(a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

2. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

The supervisory jurisdiction conferred on the High Court under this section is a creation of s.65(2) of the Constitution which provides as follows;

“s.65(2) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before a subordinate court or court-martial, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts”.

5. The marginal note to s.65 of the Constitution reads as follows:-

“Establishment of other courts.” These other courts are subordinate courts and courts-martial. Subordinate courts are the ones to whom s.18 aforesaid applies.

6. A **“court”** is defined in s.2 of the Civil Procedure Act as **“the High Court or a subordinate Court”** Why Subordinate court? Because that court is subject to the supervisory Jurisdiction of the High Court and the High Court in exercise of that power can issue such writs and give directions to that court to ensure that justice is duly administered in those courts.

7. The Business Premises Rent Tribunal on the other hand is a creature of s.11 of the Landlord and Tenant (shops, Hotels and Catering Establishments) Act, Cap 301 and is a Tribunal appointed by the Minister over a particular area as shall be specified in the appointment. Proceedings before the Tribunal are commenced by way of a **“reference”** to it and an aggrieved party can appeal from a decision of the Tribunal, to the High Court under s.15 of that Act (Cap 301 aforesaid).

8. A Tribunal is defined in the case of say, the Rent Tribunals as;

“A body established by an under an Act of Parliament to decide claims and disputes arising in connection with the administration of legislative schemes, normally of a welfare or regulatory nature. Examples are employment tribunals and rent assessment committees. They exist outside the ordinary courts of law but their decisions are subject to Judicial control by means of the doctrine of ultra vires and in cases of error of law on the face of the record” (Oxford Dictionary of Law, 2002 ed.)

9. The above definition applied to the definition of a “**court**” under s.2 of the Civil Procedure Act would mean that The Business Premises Rent Tribunal is not a subordinate court as established under s.65(2) of the Constitution and to which powers of the High Court under s.18 of the Civil Procedure can be applied. I should only add that in my understanding, a “**court**” as also defined in s.2 of the Interpretation and General Provisions Act Cap 2 cannot be extended to include Tribunals by whatever name called.

Turning back to s.18 of the Civil Procedure Act, it is my finding that the power to transfer a case from one subordinate court to another or a subordinate court to the High Court does not include the power to transfer a dispute from the Business Premises Rent Tribunal to the High Court as is now sought by the Applicant in this matter. Tribunals are specialized and created to alleviate problems for the courts and are preferred to courts “**because they have the advantages of speed, cheapness, informality and expertise**” (see Administrative Law, 5th ed. by P.P. Craig, 2003 at page 253). That is precisely why they are not included in the formal court system and for avoidance of doubt are not subordinate courts nor “**Tribunal Courts**” as was so erroneously argued on behalf of the Applicant.

11. Having so said, I would wholly agree with Mr. Mbaya Esq. Advocate that the Application dated 24.5.2006 is misguided incompetent and that being so then the Preliminary Objection must be upheld.

12. The Application dated 24.5.2006 is hereby struck out with costs to the Respondent.

13. Orders accordingly.

DATED SIGNED, AND DELIVERED AT MERU THIS 2nd DAY OF AUGUST 2006

I. LENAOLA,

JUDGE

In the presence of:

Mr. Ondari holding brief for Mr. Ombachi Advocate for the Plaintiff/Applicant

Mr. Obiri Advocate for the Defendant/Respondent

I. LENAOLA,

JUDGE