

IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Suit 248 of 2003

WINFRED MUTHONI KARUIKI.....PLAINTIFF
VERSUS
GEORGE NGA'NGA.....DEFENDANT

RULING

The parties agreed that I should deal only with the application of 29/6/2004 in which the Defendant sought an order to restrain the Plaintiff from evicting him from the suit premises pending the hearing of the suit.

Mr. Wachira submitted that the Defendant was a monthly tenant protected under the provisions of the Landlord & Tenant (Shop Hotels & Catering Establishments) Cap 301 (The Act) and as such the Defendant could not be evicted in the absence of an order of the Business Premises Tribunal.

In her replying Affidavit of the 15/12/2004 the Plaintiff deponed that the Defendant was in arrears with paying his rent and not consistent in paying the same. Additionally it is alleged that the Defendant has sublet the premises to C.G Retread co. This may well be so; however, it does not entitle the Plaintiff to evict the defendant from the suit premises in absence of a lawful order of either the Business Premises tribunal or a Court of law seized of the requisite jurisdiction.

The Plaintiff has his remedies but in view of the threat which is deponed to in paragraph 6 of the supporting affidavit it is only right that an injunction should issue to prevent the Defendant from wrongful eviction from the suit premises. The defendant has shown a prima facie case with a probability of success.

In the result I grant the application as prayed.

DATED and DELIVERED at NAIROBI on the 26th January 2005

P.J RANSLEY
JUDGE