

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
HIGH COURT CIVIL CASE NUMBER 22 OF 2005

ELIZABETH WAIRIMU RICHARD.....PLAINTIFF
VERSUS
GRACE MUTHONI NDUNGU }
CHARLES WANYEKI WAIRAGU }
HIPPO GENERAL MERCHANTS }.....RESPONDENTS

R U L I N G

Elizabeth Wairimu Richard the Plaintiff applicant seeks an order of temporary injunction under order XXXIX rule 1, 2, 2a, 3,(1), (2), and(3) of the Civil Procedure rules to restrain her landlady Grace Muthoni Ndungu (1st Respondent) from interfering with the applicant's quiet occupation of Plot No.L.R. 5118/98 Naru Moru or proceeding with the intended sale of the applicant's properties pending the determination of Business Premises Rent Tribunal Case Number 30 of 2004 at Nyeri.

From the applicant's supporting affidavit it is evident that the Respondent purported to increase rent, which increase the applicant is disputing and has filed a reference in the Business Premises Tribunal. The matter still remains pending in the tribunal. In the meantime the Respondent has moved and levied distress for rent.

What the applicant has conveniently avoided to disclose is that she is in arrears of rent. This is evident from the correspondence between the applicant's advocate and the Respondent's advocate annexed as GMN 3 and 4. The applicant has not paid the full rent even going by the old rate of Kshs.4,000/- per month.

The applicant is seeking an equitable remedy but has not come to equity with clean hands. Distress for rent is a statutory right which the Respondent is entitled to.

There is *prima facie* evidence that the right has accrued to the Respondent as there is rent which is due and owing to the Respondent from the applicant. There is therefore no justification for this court interfering with the exercise of that right.

I therefore find no merit in this application and therefore dismiss it with costs.

Dated, signed and delivered this 10th day of May 2005.

H. M. OKWENGU

JUDGE