

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 636 of 2005

DAVID HUDSON NJUGUNA.....PLAINTIFF

VERSUS

MURANGA PROPERTIES LTD.....1ST DEFENDANT

METROCOMOS VALUERS LTD.....2ND DEFENDANT

RULING

The plaintiff herein referred to as the tenant by way of this Chamber Summons seeks orders of this court that the distress levied on the plaintiff's office in the 1st defendant's premises known as Muranga Properties Building be lifted and stopped until this suit is heard and determined.

The application is premised on the following grounds:

1. That the landlord has detained the plaintiff's goods in the premises.
2. That the purported distress is unlawful as it is without leave of the Tribunal without notice contrary to the Orders of the Tribunal dated 29th January 2003 and the amount claimed as rent is not payable.

The application is also supported by an dated affidavit sworn by Tenant/Applicant in which he deponed that he is a tenant of the first defendant paying monthly rent of Shs.12,000/= and that the tenancy is a controlled tenancy under the Landlord and Tenants (shops, Hotels and Catering Establishment) Act Cap 301. That he has had problems with the Landlord through its agents and was once forced to lodge Tribunal Case No. 249 of 2002 in the Business Premises Tribunal.

That the said complaint was heard on 29th January 2003 and the Tribunal issued an order prohibiting distress without leave levying of illegal charges and harassment by the Landlord.

The counsel for the Landlord/Respondent did not attend although the dated was given in court in the presence of both counsels. The application proceeded exparte.

By this application the tenant seeks orders that the distress levied on the plaintiffs office be lifted and stopped until the matter is heard and determined. Counsel for the applicant submitted that the distress was unlawful as the same was without leave of the Tribunal and without notice as ordered by the Tribunal on 29th January 2003 the tenancy being controlled tenancy under the Landlord and Tenants (Shops, Hotels and Catering Establishments) Act Cap 301.

The tenancy of the applicant being a controlled tenancy, the landlord's action was unlawful since he had to file a dispute before the Business Premises Tribunal which is mandated to deal with such disputes before any action is taken against the tenant.

For the above reasons the application is allowed in terms of Prayer 2 of the Chamber Summons dated 26th May 2005 with costs.

Delivered at Nairobi this 27th day of September 2005.

.....

J.L.A. OSIEMO

JUDGE