



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**HIGH COURT CIVIL CASE NO. 42 OF 2004**  
**(Former Nairobi Civil Case No. 253 OF 2004)**

**JOHN NDERI NDEGWA ..... PLAINTIFF**

**VERSUS**

**STANLEY KAMWENJI GITUTO ..... DEFENDANT**

**R U L I N G**

Stanley Kamwenji Gituto (hereinafter referred to as Defendant Respondent) has raised a preliminary objection to the chamber Summons dated 17th March 2004 brought by John Nderi Ndegwa (hereinafter referred to as the plaintiff applicant) on the grounds that the suit is res judicata as the subject matter was directly in issue between the same parties in Nairobi Tribunal case No. 39 of 2003 which was decided on 11th March 2004 and further that the suit is scandalous frivolous, vexatious and an abuse of the court process. The Defendant relies on a reference made to the Business Premises Tribunal, copy of which is annexed to the Applicant's supporting affidavit together with the ruling of the Business Premises Tribunal on the reference. It is submitted that the Tribunal having found that there was no landlord and Tenancy relationship and the plaintiff/Applicant not having appealed against the ruling, this suit and application being based on the alleged landlord and Tenancy relationship cannot stand as same is res judicata.

For the Plaintiff/Applicant it is submitted that the Plaintiff's suit and application are not res judicata as the Tribunal, held that it was not competent to try the dispute between Plaintiff and Defendant. It was submitted that whereas the dispute before the Tribunal was connection of electricity and water the current dispute was barricading of the suit premises. It was further submitted that the Business Premises Tribunal is not a court as defined in the Civil Procedure Act and therefore res judicata cannot arise as matters in issue were not addressed by a court. The court was therefore urged to dismiss the preliminary objection.

It is apparent from the plaint filed herein paragraph 4 that the plaintiff's claim against the Defendant is hinged on an alleged landlord Tenancy relationship alleged to have commenced in 1990. This was the basis of the reference to the Business Premises Tribunal. The Tribunal having heard appropriate evidence ruled that it had no jurisdiction to entertain the dispute as no landlord Tenancy relationship had been established which was a pre-requisite to the invocation of the Tribunal's jurisdiction. Contrary to the submissions of the plaintiff's advocate, the reliefs sought in his current plaint are essentially the same as those that were raised in the reference to the Tribunal.

Nevertheless the question that arises is whether section 7 of the Civil Procedure Act can apply herein. I find that the plea of res judicata as provided by section 7 of the Civil Procedure Act cannot apply herein because court is defined in the Civil Procedure Act as High Court or a subordinate court acting in the exercise of its Civil jurisdiction, whereas a Tribunal under the landlord and Tenant shops, Hotels and Catering Establishment Act is not a subordinate court. It is a Tribunal established to exercise to a special jurisdiction conferred by the Act (see National Drycleaners Ltd. & Another v/s Ndune [1987] KLR 565).

Secondly the Tribunal ruled that it was not competent to try the dispute between the parties. Its ruling cannot therefore be considered to be conclusive. It is for this reason that the Tribunal ruled that "whoever is aggrieved by whatever act should seek redress in a civil court."

I do therefore overrule the preliminary objection and order that the application do proceed to hearing on an date to be fixed in the Registry.

**Dated signed and delivered this 23 rd day of July 2004.**

**H. M. OKWENGU**

**JUDGE**