

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT NO 619 OF 2004

PATRICK B. MAKARI PLAINTIFF
VERSUS
MRS. DORIS OLUOCH ABIERO DEFENDANT

RULING

At the commencement of the hearing of this Chamber Summons application dated June 11, 2004, Counsel for the Defendant/Respondent raised a Preliminary Objection, in accordance with the Notice of Preliminary Objection, dated and filed June 23, 2004.

The following are the two objections raised:

- 1. THAT Civil Suit No 619 of 2004 is not properly before this Honourable Court.***
- 2. THAT the Plaintiff/Applicant should not be heard further in this matter because they did not bring to the notice of the court all material facts when they applied for and obtained interlocutory orders on June 11, 2004.***

Counsel argued that this suit should have been filed in the Business Premises Rent Tribunal (BPRT) and not in the High Court; that this court can only exercise appellate jurisdiction once all the remedies are exhausted at Business Premises Rent Tribunal; that the Plaintiff alleges that his tenancy is “controlled” within the meaning of the law, and hence his remedy lies with the BPRT; and finally that the suit is an abuse of the legal process.

Having perused through the pleadings and the application before this Court, I find that the Plaintiff’s claim before the High Court is for an injunction, a remedy that only the High Court can grant, and one that he cannot seek before the BPRT. Accordingly, this suit is properly before this Court.

With regard to the second ground of objection, the same is based on “facts” as opposed to “law” and does not constitute a ground for Preliminary Objection.

I, therefore, dismiss the Preliminary Objection with costs to the Plaintiff.

Dated and delivered at Nairobi this 13th day of July, 2004.

ALNASHIR VISRAM

JUDGE