



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC MISC. CASE NO. 5 OF 2020

RONALD INGANGA LUDAH.....APPLICANT

VERSUS

DAVID ABDALLAH ITEMERE

KENNEDY SHITURI O MUTANYI.....RESPONDENTS

RULING

The application is dated 30th April 2019 and seeks the following orders:-

1. That this application be certified urgent and heard ex-parte in the first instance.
2. That the orders granted herein at the Business Premises Rent Tribunal Court on reference dated 21st July, 2015 be enforced and the 1st and 2nd respondents be directed to return the tenant's business and business property forthwith.
3. That the court to issue orders for the 1st and 2nd respondents to provide this court with legal documents of ownership of the said parcel of plot Marama/Lunza/1960 since all of them claim ownership leaving the applicant confused.
4. That the court to issue orders for Butere Police Station to supervise/enforce the opening of his business and return of his business property and records.
5. That the costs of this application be paid by the 1st and 2nd respondents.

It is supported by the annexed affidavit of Ronald Inganga Ludah and grounds the orders dated 21st July, 2015 were obtained lawfully and should be enforced by this honourable court. The 1st and 2nd respondents have abused and misused this courts process to commit an illegal act for which the applicant/tenant has now lodged a complaint with this honourable court for enforcement action and return of the business and business property. The entire application and orders of Business Premises Rent Tribunal Court ought to be have been honoured. The applicant/tenant is willing to vacate the said business property if his business and business property is returned in full.

The applicant submitted that the Business Premises Rent Tribunal issued orders but the 1st and the 2nd respondents never bothered to obey them. (Attached are the orders, proceedings of the Business Premises Rent Tribunal Court, a letter to Kenya power, a letter from assistant County Commissioner – Marama West Ward, Chief's letter marked RIL 1-14). That the acts of the 1st and 2nd respondents are high handed, extortionist, irregular, illegal, unprofessional and not befitting their status of a civilized person living under rule of law.

This court has considered the application and the submissions therein. The respondents were served but failed to respond. The Business Premises Rent Tribunal is one among many tribunals established under various laws enacted by parliament to deal with disputes that arise in the course of the regulation and administration of certain matters. The tribunal was established in 1965 through an Act of Parliament known as **The Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Cap.301, Laws of Kenya**. Section 14 (1) of Cap 301 has clearly stipulated as follows:

' A duly certified copy of any determination or order of a Tribunal may be filed in a competent subordinate court of the first class by any party to the proceedings before such Tribunal or by the Tribunal, and on such copy being filed and notice thereof being served on the Tribunal by the party filing the same such determination or order may, subject to any right of appeal conferred by or under this Act, be enforced as a decree of the court.'

In the instant application the applicant is seeking the orders granted herein at the Business Premises Rent Tribunal Court on reference dated

21st July, 2015 be enforced and the 1st and 2nd respondents be directed to return the tenant's business and business property forthwith. I note that the orders of the Tribunal are yet to be adopted by the Magistrate's Court as an order of the court. I find that the said orders from the Chairman of the Business Premises Tribunal should have been first filed in the Magistrates Court for adoption and decree extracted, before the Applicant could apply for its enforcement. In the Case of **Travel Planners Limited vs The Managing Director, Kenya Railway Corporation & Another (2008) KLR**, I the court held that;

“The net result is that proceedings are premature. Counsel should have the said order filed in court under Section 14 (1) Cap 301. After such adoption he should extract the order, serve, the same for compliance and it is only after such adoption, extraction and service of the adopted order that breach can arise.”

For these reasons I find this application has no merit and I dismiss it with no orders as to costs as it was undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23RD FEBRUARY 2021.

N.A. MATHEKA

JUDGE