

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
H.C.CIVIL CASE NO.173 OF 2000

CURTIS NJAMA..... PLAINTIFF

VERSUS

HANNA NYAMBURA MURITHI.....DEFENDANT

R U L I N G

The suit premises had been leased to one F. Waithira Njama who is sister to the applicant herein which lease expired in 1993. The applicant took over the premises as a tenant in 1993 without notifying the Respondent (Landlord). When the Respondent discovered the situation. She wrote to the applicant through her lawyer Nyeri Nyangoro & Co., Advocates indicating that she was willing to allow the occupant to continue occupation of the premises thereof so long as she executed a fresh lease with her. The rent payable by the previous tenant was Shs.2500/= It was agreed that the new rent would be **Shs.5000/=**

The applicant signed the lease and started paying **Shs.5000/=** as agreed but defaulted with effect from September 1999 to date. The Respondent went ahead with distress proceedings and distressed the household goods of the applicant hence this application.

The applicant seeks orders for declaration that the attachment of her goods was unlawful since the increase of the rent from **Shs.2500/=** per month to **Shs.5000** per month was the subject matter with the Tribunal.

This matter had been brought to the attention of the Chief Executive Rent Restriction Department who had advised the Landlord that the increase of rent from **Shs.2500** to **Shs.5000/=** per month was unlawfully vide his letter dated 9th August, 1995.

The applicant had filed a reference with the Tribunal No.451 of 1995 and was later coerced into signing an agreement for payment of rent of **Shs.5000/=** for a period of 5 years. It is clear from the submissions that prior to 1993 the tenancy agreement was between the Respondent and one F. Waithira who is sister to the applicant.

The applicant took over the tenancy after the lease between the landlady and her sister had expired. Without notifying the Respondent. When the Respondent discovered of the discovered, she invited the applicant to negotiate the terms of the tenancy and sign the lease.

The applicant agreed to pass a rent of **Shs.5000** per month and signed the lease and started paying for some months before she defaulted.

Filing a reference with Rent Tribunal by the applicant was not tenable since the applicant had no tenancy agreement with the Respondent before.

The rent of **Shs.5000/=** per month was negotiated when the applicant became a tenant of the Respondent for the first time. Default of payment of rent justified the action taken by the Respondent in the distress for rent proceedings.

For the above reasons, this application is dismissed with costs to the Respondent.

Dated and Delivered at Nairobi this 24th March, 2000

J.L.A. OSIEMO

JUDGE