

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C.C.CIVIL CASE NO.72 OF 2000

MARY KANINI KIBIA PLAINTIFF

VERSUS

MUKURA KAMAU DEFENDANT

R U L I N G

The applicant is the owner and landlady of plot NO.16/3 Githunguri Market while the Respondent is her tenant. The applicant alleges that the Respondent had breached the terms of the tenancy agreement and she had served him with a notice of termination of tenancy dated 21st January, 1999 under section 4(2) of the Land Lord and tenant (shops, hotels and catering establishment) Act. The respondent did not file a reference to the Business Premises Tribunal within 2 months of receipt of the Notice of Termination of tenancy under section 4(4) of the Act.

On the 17th January, 2000 the applicant filed a suit by way of plaint seeking Judgment for Shs.91,000/= with interest at court rates plus mesue profit of Shs.7000/= per month from February, 2000 until the Defendant/Respondents vacates the suit premises. She also sought for orders of eviction and costs.

The Plaint was dated 11/1/2000 the same day the applicant filed an amended plaint seeking similar orders. The defendant/respondent on being served with the plaint filed a defence. In paragraph 6 of the defence he states that on receipt of Notice of termination of tenancy, he had filed a reference to the Tribunal being SPRT No.5 of 1999 and which was decided in his favour.

On 6th March the applicant filed this application for summary Judgment as prayed in the Plaint citing failure to file reference Tribunal by the Respondent after receipt of the said notice. When this matter came up for hearing the Respondent could not address the court as he had failed to file replying affidavit to the application. Despite the fact that the defendant did not address the court. On perusal of the defence I find that same raises triable issues. One of those triable issues is that the defendant had filed www.kenyalawreports.or.ke 3 reference to the Tribunal No. 5 of 1999 which he alleges was decided in his favour when a defence filed raises any triable issues the defendant ought to be given an opportunity to defend the suit.

For the above reason this application is disallowed.

Cost to be costs in the cause.

Dated and Delivered at Nairobi this 21st day of June, 2000

J.L.A. OSIEMO

JUDGE