



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC APPLICATION NO. E058 OF 2020

LUCY WANJIRU KINYANJUIPLAINTIFF

-VERSUS-

WILSON NGUYODEFENDANT

RULING

1. The applicant, Lucy Wanjiru Kinyanjui, initiated this suit through a notice of motion dated 6/10/2020, in which she sought the following reliefs against the defendant:

i. Spent

ii. That this Honourable court be pleased to issue a temporary order for injunction against the eviction of the applicant by the respondent, his agents or any other person acting at their behest, from her business premises known as house No. 845 erected on LR Nairobi/Block 125/ 845.

iii. That the costs for this application be provided for.

2. The application was supported by her affidavit sworn on 6/10/2020 and a supplementary affidavit sworn on 18/11/2020. Her case was that she was a tenant of the respondent in relation to **Land Title Number Nairobi/Block 125/845**, located in Imara Daima Estate, on which she ran a shop/supermarket. She contended that the lease agreement between them expired in March 2020 whereupon they entered into a licence agreement pursuant to which she continued to occupy the premises. On 1/8/2020, the respondent unilaterally increased “rent” from Kshs 40,000 to Kshs 50,000. On 9/9/2020, the respondent served her with a notice requiring her to vacate the shop/supermarket by 1/11/2020. The respondent did not assign any reason for the intended termination. She filed **Tribunal Case No 810 of 2020** at the Business Premises Rent Tribunal (the **Tribunal**) at Nairobi, but could not get any relief from the Tribunal because it was not quorate and it was not conducting sittings. Consequently, she brought this miscellaneous application.

3. The respondent opposed the application through a replying affidavit sworn on 16/10/2020. He deposed that this court did not have jurisdiction to grant the relief sought in the application because there was no substantive suit before it. He added that the relationship between the parties herein was that of a licensor and a licensee and that the notice of intention to terminate the licence was properly issued. He urged the court to dismiss the application.

4. The application was canvassed through brief written submissions dated 1/2/2021, filed through the firm of Muttisya & Company Advocates. Counsel cited the case of **Patrick B Makari V Doris Oluoch Abiero [2004] eKLR** and submitted that this court had jurisdiction to entertain the dispute herein. Counsel further cited the case of **Sadhu & Another v Vadgama Garage & Another [1975] EA 3** and urged the court to allow the applicant’s application.

5. The respondent filed written submissions dated 24/2/2021 through the firm of Anthony Burugu & Co Advocates. Counsel identified the following as the four issues falling for determination in the application: (i) *What threshold must an application for injunction meet in order for the court to allow it;* (ii) *What were the terms of the licence in respect to its termination?* (iii) *Is the application herein properly filed before this honourable court?* (iv) *Does the Business Premises Rent Tribunal have jurisdiction to issue injunctive orders?*

6. Counsel outlined the criteria upon which trial courts grant injunctive reliefs as set out in **Giella v Cassman Brown Ltd [1973] EA 358** and submitted that the applicant had failed to satisfy that criteria. Secondly, counsel submitted that **Clause 4(b) and (c)** of the licence agreement entitled either party to issue a one month termination notice, hence the respondent properly issued the impugned notice. Thirdly, counsel submitted that there was no proper suit before the court because there was no plaint. Lastly, counsel cited **ELC Appeal No 60”B” of 2016; National Social Security Fund v Sokomania Limited & 3 Other [2018] eKLR** and submitted that the Business Premises Rent Tribunal had jurisdiction to grant injunctive relief. Counsel urged the court to dismiss the application.

7. I have considered the application, the response thereto, and the parties' respective submissions. I have also considered the relevant legal framework and jurisprudence. The applicant is categorical that she is a tenant of the respondent, paying rent to the respondent in respect of business premises in which she operates a shop/supermarket in Imara Daima Estate, Nairobi. On his part, the respondent contends that the relationship between them is that of licensor and licensee. Whether or not the relationship is one that is governed by the **Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301**, is the first issue that will have to be ultimately determined by the appropriate adjudicatory body.

8. Secondly, the applicant is categorical that she invoked the original jurisdiction of this court seeking a temporary relief because the Business Premises Rent Tribunal was not quorate and was not sitting. She contends that she filed **BPRT (Nairobi) Case No 810 of 2020** prior to filing the present application. The said reference subsists to date. She subsequently filed this miscellaneous application because the Tribunal was not quorate and was not sitting. Circumstances have changed between the time this application was filed and now. The Tribunal is now quorate and is currently sitting. There is therefore no proper reason why this court should invoke its original jurisdiction in this miscellaneous application when the Tribunal is seized of the substantive dispute and is sitting.

9. Thirdly, no plaint was presented in this suit. In essence, even if I were to fully exercise this court's original jurisdiction, there will be no substantive suit to determine because no plaint was filed in this suit.

10. In the circumstances, I will refrain from pronouncing myself on the merits of the application dated 6/10/2020 on the ground that the application has been overtaken by events because the Business Premises Rent Tribunal which is seized of the substantive dispute is now quorate and sitting. I will direct the applicant to prosecute the pending reference before the Business Premises Rent Tribunal. I will only grant a temporary measure of protection for 30 days within which the applicant shall move the Business Premises Rent Tribunal for appropriate interlocutory relief, if necessary merited.

Disposal Orders

11. In the end, I make the following disposal orders in relation to the notice of motion dated 6/10/2020.

- a. The application dated 6/10/2020 is marked spent because the Business Premises Rent Tribunal is now quorate and sitting.**
- b. The interim order which subsisted in this suit pending delivery of this ruling shall remain in place for a period of 30 days from today, during which period the applicant will be at liberty to move the Business Premises Rent Tribunal for appropriate interlocutory relief**
- c. Because these proceedings were occasioned by the fact that the Tribunal was not sitting, there will be no orders as to costs of this suit.**
- d. This file shall be marked "case closed" upon expiry of 30 days from today.**

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21ST DAY OF JUNE 2021.

B M EBOSO

JUDGE

In the Presence of: -

Mrs Ahisiola for the Applicant

Ms Feks for the Respondent

Court Assistant: Hilda