



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. E152 OF 2020**

**SILAS BIYOGO ONDIMU.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**MONICAH W. MUNDARA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**SORTMASTERS INVESTMENT LIMITED.....2<sup>ND</sup> DEFENANT/RESPONDENT**

**RENT RESTRICTION TRIBUNAL.....3<sup>RD</sup> DEFENANT/RESPONDENT**

**RULING**

1. The Plaintiff/applicant filed a plaint and Notice of Motion dated 16<sup>th</sup> October 2020. It is brought under article 20, 22, 50(1), 23(3), 159(2) (d), 162(2), 165(5) and 258 of the Constitution of Kenya 2010, Section 18, 19 and 24 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, and all other enabling provisions of the law.

2. It seeks orders:-

**1. Spent.**

**2. Pending the hearing and final determination of this suit, of execution of the orders dated 10<sup>th</sup> September, 2020 by the 3<sup>rd</sup> Respondent in the Rent Restriction Tribunal at Nairobi in Rent Restriction Case No 1261 of 2020.**

**3. Pending hearing and determination of this suit, a permanent injunction to issue against the 1<sup>st</sup> and 2<sup>nd</sup> defendant by themselves, their servants, or agents or any one authorized by them of claiming under them in any manner or otherwise howsoever subjection the plaintiff his servants or agents to any annoyance or harassment with the intention thereby of inducing or compelling the plaintiff to vacate Residential House Number 58 Laiboni Gardens situated at Harambee Estate Nairobi hereinafter referred to as the "demised premises" or any part thereof and/or in any manner to occasion the frustration or termination of the tenancy enjoyed by the plaintiff.**

**4. Pending the hearing and final determination of this suit, the 1<sup>st</sup> and 2<sup>nd</sup> defendants be restrained from communicating with the plaintiff both in electronic and print means.**

**5. Pending the hearing and final determination of this suit, the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant, their servants and/or agents or otherwise howsoever be restrained from entering, leasing to a third party and levying distress upon the demised premises.**

**6. Pending the hearing and final determination of this suit, the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant their servants and/or agents or otherwise howsoever be restrained from interfering howsoever with the Applicant's quiet enjoyment, use, possession and occupation of the demised premises.**

**7. General damages for trespass, mental torture, harassment, humiliation, embarrassment and ridicule suffered by the plaintiff.**

**8. Exemplary damages for constructive eviction of the plaintiff.**

**9. Aggravated damages.**

**10. Interests of court rates on (7), (8) and (9) above herein.**

**11. The OCS Buruburu Police Station be directed and/or ordered to enforce, implement and/or otherwise oversee compliance with the orders of this court.**

**12. Costs of this suit to be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendant jointly and/or severally.**

**13. Such further and/or other relief as the court may deem fit and expedient to grant.**

3. The grounds are on the face of the application and are set out in paragraphs 1 to 16.

4. The Application is supported by the affidavit of Silas Biyogo Ondimu, the plaintiff/applicant sworn on the 16<sup>th</sup> October 2020.

5. The application is opposed. There is a preliminary objection filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents dated 29<sup>th</sup> October 2020. The grounds are:-

**1. This matter has been irregularly filed in this court as an appeal by way of notice of motion.**

**2. That this application is misconceived and bad in law and out to be struck off.**

**3. That the application violates the provisions of the Rent Restriction Tribunal Cap 296 of the Laws of Kenya and order 42 rule 6 of the Civil Procedure Rules.**

6. The plaintiff/applicant filed a reply to the preliminary objection. The replying is in form of submissions and are dated 12<sup>th</sup> November 2020.

7. I have considered the preliminary objection and the reply to the preliminary objection. The issue for determination is whether the Notice of Motion dated 16<sup>th</sup> October 2020 ought to be struck out for want of form.

8. The plaintiff/applicant in his reply concedes that that he has moved this court though a plaintiff. He however prays that the plaintiff be treated as properly filed under **Article 159(2)** of the Constitution which provides that; in exercising judicial authority, the courts and tribunals shall be guided by the following principles:-

**“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—**

**a) justice shall be done to all, irrespective of status;**

**b) justice shall not be delayed;**

**c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);**

**d) justice shall be administered without undue regard to procedural technicalities; and**

**e) the purpose and principles of this Constitution shall be protected and promoted.**

9. The plaintiff/applicant moved this court by Plaintiff. The same arises from the proceedings of the Rent Restriction Tribunal in Rent Restriction Case NO 1261 of 2020. It appears the tribunal issued orders on 10<sup>th</sup> September 2020 which the plaintiff/applicant seeks to stay.

10. Under Section 5 of the Rent Restriction Act, the Tribunal has jurisdiction to deal with disputes arising between Tenants and landlord. **Section 8** of the said Act provides that:-

**“(1) Except, as provided by subsection (2), every decision, determination and order of the tribunal under the provisions of this Act shall be final and conclusive and no appeal shall lie therefrom to any court.**

**2. An appeal shall lie the Environment and Land Court from any such decision, determination or order the following cases-**

**(a) In the case of an order under subsection (5) or section (6) or**

**(b) or any point of law; or**

**(c) in the case of premises where of the standard rent exceeds one thousand shillings, a month or any point of mixed facts and law.**

*And for the purposes of this sub section, the determination of any rent or any sum shall be a matter of fact.....”*

11. Section 13(4) of the Environment and Land Court Act provides that:-

*“In addition to the matter referred to in subsection (1) and (2) the court shall excuse appellant jurisdiction over the decision of subordinate court or tribunals in respect of matters falling within the jurisdiction of the court”.*

From the foregoing provisions it is clear that the only way the plaintiff/applicant could move this court is by way of an appeal and not by plaint as he has done.

12. Without belaboring the point. I find that the preliminary objection herein is merited and the same is upheld. The notice of motion dated 16<sup>th</sup> October 2020 together with the plaint dated the same date are hereby struck out with costs to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 29TH DAY OF JULY 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Plaintiff in person present

Mrs. Owino for the Defendants

Phyllis – Court Clerk