



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NUMBER 75 OF 2008

SAMMY AMUTAVI(suing as the administrator of the Estate of

PETER AMUTAVI.....PLAINTIFF/APPELLANT

VERSUS

DANEVA COMPANY LIMITED.....DEFENDANT/RESPONDENT

RULING

1. This case was filed by the plaintiff against the defendant on the 7th May 2008 and amended on the 22nd May 2008. The plaintiff sued as the legal representative of the Estate of the Late Peter Amutavi who was a tenant on premises known as **United Plaza, Nakuru on Title No. Nakuru Municipality Block 5/58** and operated a shop by name **“Tip Top Clothing Shop.”**

The defendant is the Landlord. It is alleged that the defendant had denied the plaintiff entry into the business shop by locking up the said premises.

2. The plaintiff's claim is for a declaration that the interference by the Defendant with the business premises is illegal and wrongful and sought for a perpetual injunction to restrain the defendant from interfering with his businesses and general damages for trespass and loss of business. A mandatory injunction was also sought to compel the defendant to open the business premises.

Together with the plaint, an application was filed seeking interim orders pending the hearing and determination of the suit.

3. Upon hearing of the application interpartes, the court delivered a ruling on the 24th July 2008 – to the effect that the tenancy between the plaintiff and the defendant was controlled tenancy, that there was pending a Tribunal Reference between the parties upon a notice to vacate premises and issued an injunctive order restraining the defendant from terminating the tenancy to allow the applicable law to take its course. To my understanding the applicable law was the Business Premises Rent Tribunal and the case pending therein.

4. On the 1st October 2014, this court directed parties to take a hearing date for this case. On the 25th June 2015, the Defendant filed a Preliminary Objection to the hearing of the suit on the following grounds:

1. That the matter was found by J.E. Emukule Judge, to be a landlord-tenant claim, and to be heard by the Business Premises Rent Tribunal.

2. That the Business Premises Rent Tribunal(BPRT) case No.127 of 2007 between the parties was heard and judgment delivered on the 19th June 2009 which settled issues in this case.

3. That this case is therefore Res Judicata, and that the suit premises no longer exist.

5. Mr. Ikua Advocate for the defendant submitted that the Tribunal case was finalised and the landlord was allowed to demolish and overhaul the business premises and ordered all the tenants to vacate the premises which was done and therefore the shop subject of this case no longer existed. It is his submission that the Tribunal's judgment concluded this case, and this court can not sit to hear the matter already concluded.

6. Mr. Kibe Advocate for the plaintiff disagreed with the Defendant's submissions. It is his submission that the case before the Tribunal was different and even if the tenancy was terminated, other issues stated in the plaint were not determined. He urged that the suit do proceed to full hearing.

7. The court has considered the submissions by counsel. It is common ground that the Landlord -Tenant relationship was severed as held by the BPRT judgment. The plaintiff in this case in its amended plaint sought other reliefs against the defendant being general damages for trespass and loss of business.

I have considered the judgment of the Tribunal in BPRT case **Number 127 of 2007**. It is between different parties, **Telesonic Ltd and Deneva Ltd**(the defendant in this case). It concerned the same business premises but occupied by different tenants, among them the plaintiff.

8. The chairman of the tribunal in his judgment dated 19th June 2009, allowed the tenancies of all the tenants to be terminated upon a one month notice being given to the tenants who were also allowed to move back to the premises on the 1st November 2009 after the construction was completed. That being the case, the court finds that the BPRT Judgment did not make any findings on all the issues raised by the plaintiff in this suit. Indeed, the BPRT dealt with the issue of the Notice to vacate issued to the plaintiff and other tenants in November 2007 only. It cannot be said that this suit is *Res Judicata* as envisaged in **Section 7 of the Civil Procedure Act**, as it did not determine all the issues placed in the suit. The court finds the Preliminary objection without merit and is dismissed with costs.

Dated, signed and delivered in open court this 12th day of May 2016

JANET MULWA

JUDGE