



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 657 OF 2011

BENEDICT KILONZO MWENGA.....APPELLANT

VERSUS

PETER MUNUVE MWANGANGI

PAULINA NGOMI MWANGANGI.....RESPONDENTS

RULING

1. This ruling is the outcome of two motions. The first motion is the one dated 8th May 2015 taken out by the Respondents whereof they sought for inter alia, an order for the eviction of the Appellant from L. R no. 209/8313, Industrial Area, Nairobi. The motion is supported by the affidavit of Peter Munuve Mwangangi. The motion was served upon the Respondents' advocate but the same never attracted any response. The second motion is the one dated 17th June 2015, taken out by one Gibson Munyiri, the proposed Interested Party herein in which he sought for the following orders:

1. ***THAT this application be certified urgent and heard ex parte in the 1st instance.***
2. ***THAT pending the hearing and determination of this application inter partes, there be and is a stay of execution of the judgement and decree herein dated 10th March 2015 and of the Award/judgement/order dated 25th November 2011 in Business Premises Tribunal Reference/Cause no. 881 of 2010 Nairobi.***
3. ***THAT GIBSON N MUNYIRI be and is hereby enjoined in these proceedings as an interested party.***
4. ***THAT the judgement and decree dated 10th March 2015 in this appeal be and is reviewed and set aside for sufficient cause, for being a nullity ab ignition and in the interest of justice.***
5. ***THAT this Honourable court be and is pleased to direct that the Business Premises Tribunal reference/Cause no. 881 of 20101 Nairobi be and is hereby withdrawn and transferred to the High Court for purposes of disposal by directing that the same is a nullity and the proceedings and judgement dated 25th November 2011 be and is expunged and set aside respectively.***
6. ***THAT costs of this application be and is hereby awarded to the applicant.***
7. ***THAT this court may deem fit and just.***

2. The later motion is supported by the affidavit of Gibson Munyiri the proposed Interested Party and the further affidavit of Rayford Munyiri Muingai.

3. There is no doubt that the outcome of the application dated 17.6.2015 will affect the outcome of the motion dated 8th May 2015. In view of what I have just stated, it is therefore important to first

determine the motion dated 17.06.2015. It is the submission of Mr. Obwayo, learned advocate for the proposed Interested party that the 1st and 2nd Respondents have no proprietary interest over the suit property since they have not produced title documents to establish their ownership. The Respondent's advocate did not oppose the proposed Interested Party's application. Mr. Obwayo further argued that the judgement delivered by the Business Premises Rent Tribunal was null and void therefore the same should be withdrawn from the tribunal and transferred to the High Court for hearing and disposal.

4. The proposed Interested Party also argued that since he is the legal representative of the registered proprietor of L.R. No. 209/8313, he should be enjoined to these proceedings. The proposed Interested Party further argued that the Respondents were not agents of the registered owner of the suit premises but they merely represented themselves as owners and proceeded to demand and obtain rent from the suit property and filed the suit without any legal Interest or basis. He urged this court to treat the respondents as mere trespassers. It is argued that the proceedings before the tribunal and this court went on without the full knowledge and frank disclosure of the real owner.
5. Nzamba Kitonga learned senior counsel for the Appellant, urged this court to dismiss the motion dated 17.6.2015. He pointed out that the affidavit filed in support of the motion was never signed by Gibson Munyiri who lives in London hence the same is a forgery. The learned senior counsel invited this court to compare the known signatures of Gibson Munyiri with that appended to the affidavit filed in support of the motion dated 17.6.2015.
6. He argued that a criminal activity has been perpetuated by Rayford Munyiri hence there is need for investigation.
7. Mr. Kitonga further argued that the tenant and the landlord have been in litigation before the Business Premises Tribunal until 2011 when the tenant lost. The tenant preferred an appeal before this court which he eventually lost. This court was beseeched to read mischief in this matter on the part of the proposed Interested Party because he only came to file this motion at the state of execution. Therefore there is nothing the Interested Party to joint. In any case, it is argued that the court order did not. The Interested Party Mr. Kitonga also pointed out that the proposed Interested Party had sued the Respondents but that suit was eventually dismissed for want of prosecution. As expected, the proposed Interested Party and one Rayford Munyiri, denied the allegation that Rayford Munyiri appended his signature in the affidavit in place of Gibson Munyiri hence there is no need to order for investigation.
8. I have carefully considered the rival submissions over the motion dated 17.6.2015. It is not in dispute that the same was filed only after the Respondents moved to court to seek for an order of eviction against the Appellant. It is also not in dispute that the proposed Interested Party's suit against the Respondents has been dismissed for want of prosecution and no appeal has been preferred.
9. It is also not in dispute that the Appellant lost his appeal before this court and there is no evidence that he intends to challenge this decision on appeal. The question is whether or not the decision of the Business Tribunal will affect the proposed Interested Party.
10. There is no doubt that the Business Premises Rent Tribunal heard and determined a dispute between a tenant and a landlord over L.R No. 209/8313. The proposed Interested Party was not a party to those proceedings. The effect of the decision of the Business Premises Tribunal will obviously give rise to the eviction of the tenants. The proposed Interested Party does not claim to be a tenant. He has specifically claimed that he is the legal representative of the estate of the registered proprietor of the aforesaid premises.
11. With respect, I agree with the submissions of Mr. Kitonga that the Business Premises Rent Tribunal's decision will not affect the proposed Interested Party but will essentially affect the appellant. I also agree with the submissions of Mr. Kitonga that the remedy available to the

proposed Interested Party lies elsewhere and not through these proceedings which this court has heard and determined.

12. In the end I see no merit in the motion dated 17.6.2015. The same is dismissed with costs to the Respondents.

13. Let me now revisit the motion dated 8.5.2015. I have already stated that the motion is not opposed. The Respondents are basically seeking for the eviction of the Appellant who lost on appeal. The Respondents have a lawful judgement which can only be actualised by issuing the orders sought. Consequently I allow the motion as prayed with costs.

Dated, Signed and Delivered in open court this 2nd day of September, 2015.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff.

.....for the Defendant.