



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI**

CIVIL CASE NO. 552 OF 1997

SAMUEL G. KIRIKA & ANOTHER.....PLAINTIFF

versus

SAMUEL KIHARA KIRIKA

T/A KIHARA NDIBA & CO. ADVOCATES.....DEFENDANT

RULING

The applicant is an advocate of this court who until 1st April, 1998 occupied office premises described in these proceedings as Room No. 8 3rd Floor, Old East Building, Tom Mboya Street, Nairobi.

On 1st April, 1998 he was given five (5) minutes to vacate the premises and when he failed to comply, he was forced out therefrom and dispossessed of its occupation.

The applicant then moved the court under a certificate of urgency by way of Chamber Summons for orders that the respondents be compelled to open the offices to the applicant and re-instate him; declare the acts of the respondents of 1st April, 1998 illegal and costs.

Contemporaneous to the applicant's application, the respondents also filed an application seeking an injunction to restrain the respondent/applicant from further entering into remaining in or otherwise interfering with the suit premises. They also asked for payment of arrears of rent amounting to Kshs. 86,000/-.

The parties have made their submissions which I have on record.

The summary of the applicant's grounds is set out in the application. The thrust is that it was illegal to lock out the applicant after serving him with only five minutes notice; the applicant has a pending application dated 9th June, 1997 which will determine whether he is a tenant or a licensee; the applicant is going to suffer irreparable loss as he practices law from the locked offices and is not able to meet his clients.

It can be discerned from the grounds of objection and the replying affidavit that the respondents case is that the applicant is a licensee in the suit premises which licence expired on 31st March, 1998 before me was evicted on 1st April, 1998. To grant him the orders sought would be to extend the contract that has expired, he has already been evicted, he is indebted to the respondents and finally, the premises have been given to a third party.

There is no dispute that one Samuel Githaiga Kirika is the landlord who let the suit premises to Geoffrey N. Theuri. By a letter dated 12th April, 1996, the said Mr Theuri gave Mr Samuel Kihara Ndiba a licence

to occupy the suit premises. The terms of the licence inter alia were that the licence would be for an initial period of two years ending on 31st March, 1998 and that the rent would be paid direct to the landlord on account of Mr Theuri. Mr Samuel Kihara Ndiba was asked to signify his acceptance of the terms by signing the letter. This he did. The landlord also signed to signify his acceptance thereto.

There is also on record a letter dated 31st May, 1996 by the applicant herein addressed to the two respondents. The said letter is instructive and the same reads as follows:

“ Ref: OFFICE NO. 8 - 3rd FLOOR OLD EAST BUILDING , NAIROBI

I Refer to all the discussions, agreements and letters held, entered into and exchanged between the two of us, and in particular Mr Theuri's letter to me dated 12th April, 1996 in which we agreed that I am Mr. Theuri's licensee while Mr. Theuri is Mr Kirika's tenant. I hereby confirm that, that will remain the legal position and that I have forthwith relinquished any further claims that I am the tenant in the said premises, and will remain henceforth as Mr Theuri's licensee strictly in terms of the above mentioned letter. As proof of my sincerity therein I hereby surrender the tenancy agreement entered into between Mr Kirika and myself on 11th April, 1996.”

In the letter I cited earlier dated 12th April, 1996 which granted a licence to the applicant, it was provided that if the applicant intended to leave the premises before 31st March, 1998 he would give the tenant Mr Theuri a two month's notice in advance or two months rent in lieu thereof. There was no provision for the tenant to give the licensee any notice at all.

I take it that the applicant read and understood the terms and conditions of the licence before he appended his signature. Further, when he wrote his letter of 31st May, 1996 aforesaid he must have known he was reemphasizing the terms thereof and if there were any amendments to be made, that was the best opportunity to do so. That he did not mention any amendments and most importantly the issue of notice, points to the fact that he was satisfied with that arrangement.

After going through all the material before me, I find that the licence was terminated by effluxion of time. The applicant was supposed to have vacated the premises on 31st March, 1998. That was the end of the contractual period and since the contents of the document speak for themselves, I am unable to read anything else into that contract to salvage the situation.

It will be noted that I have not addressed the subject of arrears of rent. It does not arise in this application and can be urged at a different forum. As for now I find the applicant's application hereby fails and must be dismissed. Following this order, I do not deem it necessary to address the respondents application. It has been overtaken by this order. The respondents shall have the costs of this application.

Orders accordingly.

Dated and delivered at Nairobi this 24th day of April, 1998.

A. MBOGHOLI MSAGHA

JUDGE