

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE 2485 OF 1998

1 HELLON OWITI WANDOLO.....PLAINTIFF

- Versus-

1. NAHASHON MATIVO.....)
) DEFENDANT
2. CITY COUNCIL OF NAIROBI.....)

RULING

The applicant was a tenant on plot No. 519 Dandora Phase 1 belonging to the Respondent.

How he came into occupation is not an issue at this stage and it is not for this court to determine the legality or otherwise of the tenancy.

On 18.8.1998 the respondent/landlord served the applicant/tenant with a 3 months notice terminating the tenancy. On 21.8.1998 the applicant filed a reference to the Tribunal in compliance with section 6 of the Landlord and (Tenant/Shops, Hotels and Catering Establishment) Act Cap. 301. The dispute was registered as No. 303 of 1998 and it was fixed for hearing on 10-11-1998. But on 9.11.1998 the respondent without waiting for the dispute to be heard and determined by the Tribunal forcefully throw the applicant out of the suit premises.

The applicant sought orders to direct the respondent to reinstate the applicant to the suit premises pending the hearing and determination of the dispute now before the Tribunal.

In his submissions, the respondent alleges that the applicant was not his tenant and that if anything he was a trespasser.

As I have said earlier the respondent had served the applicant with a 3 months notice terminating his tenancy.

That fact alone is enough evidence that he had recognised the applicant as his tenant. He cannot now turn round and deny that fact. However, disputes over tenancy are a preservation of the Tribunal which is now handling the matter.

This courts powers are limited only to preserving the status quo by issuing an order of injunction to restrain the landlord from evicting the tenant before the Tribunal settles the dispute. Now that the applicant has already been evicted, there is nothing to be preserved.

The only order I issue now is that the suit premises should not be leased to a 3rd party before the dispute is finalised by the Tribunal.

These are the orders of this court.

Costs be costs in the cause.

Delivered this 25th day of November, 1998.

J.L.A. OSIEMO

JUDGE