



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
MILIMANI LAW COURTS
ELC. CASE NO. 1166 OF 2016

1. KIRARA KIIRU1ST PLAINTIFF

2. PHILIP MIONKI M. MWERERIA.....2ND PLAINTIFF

By ALI ABDULKADIR 3. 3 the RD PLAINTIFF

4. GODFREY Karuri GITHAE 4TH Plaintiff

5. FLORA WANJIRU NJORA.....5TH PLAINTIFF

VERSUS

1. GEE TEE SONS LIMITED.....1ST DEFENDANT

2. CHADOR AUCTIONEERS.....2ND DEFENDANT

3. BEYOND VISION AUCTIONEERS.....3RD DEFENDANT

RULING

Coming up before me for determination is the Defendant’s Notice of Preliminary Objection dated 14th July 2014 seeking that the whole suit and the Notice of Motion dated 22nd September 2016 be dismissed on the ground that this court does not have the jurisdiction to hear and determine this suit in view of the statutory provisions of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (hereinafter referred to as the “Act”).

Both the Plaintiffs and the Defendant filed their written submissions.

In her submissions, the Defendant contended that the subject matter of this suit is the tenancy as between the Plaintiffs and the Defendant in respect of the premises known as Land Reference Number 4953/93 located in Thika Town, Kiambu County (hereinafter referred to as the “suit property”). She urged that this suit arises from the tenancy notice to increase rent of the suit property served upon the Plaintiffs by the Defendant. The Defendant submitted that the issue of whether or not that tenancy notice was illegal, null and void falls within the jurisdiction of the Business Premises Rent Tribunal created under the Act (hereinafter referred to as the “Tribunal”). She even pointed out that the Plaintiffs had in fact already filed

a Reference before the Tribunal which is yet to be withdrawn. She added that the issue of who is the landlord of the suit property following the demise of the owner is an issue that the Tribunal can also determine.

In their submissions, the Plaintiffs agreed with the Defendant that the jurisdiction to determine whether any tenancy is controlled or not or whether any landlord has a right to increase rent in respect of any controlled tenancy or whether a party to a suit is the landlord is definitely with the Tribunal. They however urged that over and above those issues, the Plaintiffs are also seeking orders of injunction which the Tribunal has no jurisdiction to grant. On that ground, they submitted that they are before the correct court which has the jurisdiction to hear and determine all the issues arising from this suit.

The only issue arising for determination is whether or not this court has the jurisdiction to hear and determine this suit. It is common ground that the Plaintiffs are controlled tenants occupying the suit property which belongs to the late George Thuo. It is also common ground that the Defendant, purporting have substituted the deceased proprietor, served the Plaintiffs with tenancy notices increasing the rent. The Plaintiffs have admitted that they filed References at the Tribunal which they intend to withdraw. They have also filed this suit. Both the Plaintiffs and the Defendant agree that the issues of whether or not the tenancy notices served upon the Plaintiffs are valid and who is the landlord fall within the jurisdiction of the Tribunal. The Plaintiffs have however pointed out that in addition to that, they have sought orders of injunction to issue restraining the Defendant which orders cannot be granted by the Tribunal but fall within the jurisdiction of this court alone. It is on this one point that they contend that this suit is before the right court.

The issue of which court has jurisdiction to issue injunctions has been dealt with in previous decisions of the Court of Appeal which are binding on this court under the doctrine of stare decisis. Before enunciating those decisions, I should also point out that the Plaintiffs did subsequently file another suit being **ELC No. 1166 of 2016** in which they sued 3 other defendants. That suit was consolidated with this suit in an order by this court issued on 2nd December 2016. The consolidated suit therefore comprises of two sets of plaints which contain prayers for permanent and mandatory injunctions. Can those prayers be granted by the Tribunal? I think not. On this, I agree with the position put forward by the Plaintiffs that the Tribunal does not have the jurisdiction to issue orders of injunctions as are sought by the Plaintiffs in the consolidated suit. On this point, I rely on the Court of Appeal decision in **Narshidas & Co. Ltd versus Nyali Air Conditioning & Refrigeration Civil Appeal No. 205 of 1995** where the following was stated:

“What does a controlled tenant confronted with a threat of forcible eviction do? He cannot go to the Business Premises Rent Tribunal established under the Act as that Tribunal has no jurisdiction to issue an injunction or similar remedy against the Landlord. That Tribunal has no jurisdiction to do so as was held by that court in the case of the Republic versus Nairobi Business Premises Rent Tribunal & Others Ex-Parte Karasha (1979) KLR 147 and also in the case of Re: Hebtulla Properties Limited (1979) KLR 96. The learned judge was therefore in our view clearly wrong in saying that the superior court had no jurisdiction to hear the matter before it. There was clearly jurisdiction to deal with the matter.”

This position was reiterated in another Court of Appeal decision in **Caledonia Supermarket Limited versus Kenya National Examination Council (2000) 2 EA 357** where the court rendered itself thus:

“Faced with what was clearly an illegal eviction, the Appellant could not seek protection from the Business Premises Tribunal because the notice given being an invalid notice deprived the Tribunal of the power to intervene. In any case, the Tribunal has no power to issue an injunction. That left the Appellant with only one course of action. It had to seek redress from the High Court.”

I agree with these decisions and proceed to hold that in light of the fact that the Plaintiffs are seeking orders of temporary, permanent and mandatory injunctions in the consolidated suit, the Tribunal does not have the jurisdiction to grant those orders. It is this court that has such jurisdiction and therefore the

Plaintiffs are before the right court.

Arising from the foregoing, the Preliminary Objection is hereby dismissed. Costs shall be in the cause.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MARCH 2017.

MARY M. GITUMBI

JUDGE