



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. APPEAL NO. 100 OF 2016

SHABAN ABDI T/A QUEENS COACH.....APPELLANT

VERSUS

HAMYR INVESTMENTS.....RESPONDENT

RULING

The Applicant, Abdi Shaban trading as Queens Coach filed a Memorandum of Appeal on 28/12/2016 against Hamyr Investments indicating that it was an appeal from the decision of the Business Premises Rent Tribunal (BPRT) in Cause No. 104 of 2016. His ground for appeal is that the Tribunal erred in finding that there was no landlord tenant relationship between the parties yet he was a tenant.

At the time of filing the appeal, the Applicant also filed a chamber summons stated to be brought under the High Court Practice and Procedure Rules (Part One Rule 3) in which he seeks stay of execution of the orders granted by the BPRT and to restrain the Respondent from evicting or interfering with his quiet use of the business premises situated at the Respondent's property known as GF2 ground floor, Hamyr Investment Building located at Ngariama Lane Nairobi ("the Suit Property"). The Applicant also seeks a temporary injunction to restrain the Respondent from selling the Applicant's Property by auction which it forcefully removed and confiscated from the Applicant's shop pending hearing and determination of the appeal.

The application is made on the grounds that the Applicant has filed an appeal challenging the decision of the BPRT Chairman delivered on 16/12/2016 and the Applicant is apprehensive that the Respondent may dispose of the Applicant's goods which will cause the Applicant to suffer irreparable loss and damage and thereby render the appeal nugatory. It is supported by the affidavit of Shaban Abdi in which he depones that he was a tenant in the Respondent's Suit Property since 2010. He states that the Respondent broke into his shop and confiscated his goods and that he reported the matter to the police station. He filed a reference at the BPRT being ref. 104 of 2016 together with an application for injunctive relief.

The court has looked at the documents annexed to the affidavit and notes that BPRT granted the Applicant interim orders on 26/1/2016 and that it discharged these orders on 21/12/2016 when it found that the tenant's reference was incompetent since there was no landlord and tenant relationship between the parties.

When the Applicant moved this court, the court certified the application urgent on 29/12/2016 and granted him interim orders on condition that the Applicant would deposit in court security in the sum of Kshs 550,000 within 10 days failing which the interim orders would stand discharged. There is no evidence to show that this sum was deposited.

The Respondent opposed the application. It relied on the affidavit of its director, Mohammed Hazin

Manji. He deponed that the Appellant was not a party in BPRT case no. 104 of 2016 and that the appeal is incurably defective for introducing new parties that is, Abdi Shaban trading as Queens Coach. He states that the Appellant has never been a tenant in the Respondent's premises and that the Suit Property was leased to Queens Coach Ltd who terminated the agreement and was evicted on 9/2/2017. He further depones that the Appellant was an employee of Queens Coach (K) Limited where he worked as its Regional Branch Manager. He stated that Queens Coach (K) Limited gave notice to the Respondent that it wished to terminate the tenancy agreement for the Suit Property by its letter of 26/6/2016. In that notice, Shaban Abdi (the Applicant herein) is stated as the person who will settle all accounts for rent by July, 2015, after which the company will not be responsible for any claims made after this date. The Respondent maintains that it has never entered into tenancy agreement with Appellant or leased any premises to him. The Respondent also claims that it suffered loss amounting to Kshs. 560,000 during the period when the Applicant had obtained a temporary order to remain in possession of the Suit Property without paying any rent. It is also urged that the application has been overtaken by event since the Appellant was evicted from the premises following the BPRT's order of 8/2/2017.

The court has looked at a letter dated 7/7/2015 on the letterhead of Queens Coach which the Applicant wrote to Queens Company Uganda Ltd complaining about unpaid staff wages. He states in the letter that the owner moved the buses to Uganda secretly without consulting him as the Branch Manager in charge of the Nairobi Branch of Queens Coach. The letter is copied to the Central Police Station, the Labour Office, Ministry of Foreign Affairs and the Uganda High Commission.

The court has considered the Memorandum of appeal, the application dated 22/12/2016, the affidavit in support of the application and the replying affidavit together with the submissions filed by both parties.

The court is not satisfied that the Applicant has a *prima facie* case against the Respondent for it to grant the temporary injunction sought. The Respondent denies leasing the premises to the Appellant or the existence of a tenancy with the Applicant. Since the Applicant has already been evicted from the Suit Premises, any loss the Applicant may suffer can adequately be compensated by an award of damages.

The court is not satisfied that the Applicant has met the conditions for the grant or stay of execution under order 42 rules 6 of the Civil Procedure Rules. The application is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 21st day of September 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Mung'ao for the Plaintiff

No appearance for the Defendant

Mr. V. Owuor- Court Assistant