



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CASE NO. 1473 OF 2016**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION UNDER SECTION 8 AND 9 OF THE LAW REFORM ACT CHAPTER 26 LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

**AND**

**IN THE MATTER OF ARTICLES 23, 40, 50 (1) AND 165 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF BUSINESS PREMISES RENT TRIBUNAL CASE NO. 825 OF 2016**

**(JOSHUA GATHURU NJERI – VS – SUPREMA COMPANY LIMITED)**

**BETWEEN**

**LUCY WAIRIMU GITHUKA.....1<sup>ST</sup> APPLICANT**

**SUPREMA COMPANY LIMITED.....2<sup>ND</sup> APPLICANT**

**AND**

**THE CHAIRMAN, BUSINESS**

**PREMISES RENT TRIBUNAL.....RESPONDENT**

**JOSHUA GATHURU NJERI.....INTERESTED PARTY**

**JUDGEMENT**

1. Through the Notice of Motion filed in court on 24/9/2016, the Applicant seeks an order of certiorari to remove to this court and quash the decision made by the Chairman of the Business Premises Rent Tribunal (BPRT) ordering the landlord to allow the tenant access to the business premises or in default the tenants to break the locks and gain access under supervision of the OCS Kasarani Police Station. The orders were made on 6/10/2016 and 15/11/2016. The *Ex parte* Applicant also seeks an order of prohibition against the Respondent and the other members of BPRT from presiding over the proceedings or taking evidence or issuing orders or determining tribunal case no. 825 of 2016 Nairobi.

2. In the statement of facts filed in court on the same day, the grounds upon which the reliefs are sought

are that the Interested Party filed a reference against the 2<sup>nd</sup> Applicant naming it as the landlord of Nairobi/Block 116/244 yet the 1<sup>st</sup> Applicant is the proprietor while the 2<sup>nd</sup> Applicant is her agent. The 1<sup>st</sup> Applicant entered into a tenancy agreement with Elizabeth Njoki and not the Interested Party. Elizabeth Njoki vacated the Suit Premises on 30/9/2016 and that the Applicants never transferred the premises to the Interested Party.

3. The 1<sup>st</sup> Applicant deponed in her affidavit that on 1/10/2016 the Interested Party invaded her property and forcefully entered and occupied the premises previously rented to Elizabeth Njoki. When the Applicant went to report this incidence to the OCS Kasarani the Police officer declined to record a statement but instead requested them to report the matter to the Businesses Premises Rent Tribunal. He then filed BPRT case no. 825 of 2016 against Suprema Company Limited seeking an order to compel the landlord to open and allow the tenant access to the business premises. The 1<sup>st</sup> Applicant who owns the suit property was not made a party to the BPRT case. BPRT issued an order on 14/9/2016 compelling the 1<sup>st</sup> Applicant to receive rent from the Interested Party and in default the rent would be deposited with the tribunal.

4. The Applicant complains that the orders made on 6/10/2016 ordering the 2<sup>nd</sup> Applicant to open and allow the tenant access to the suit premises are final in nature and were issued without the 1<sup>st</sup> Applicant being made aware of the case. Further that no material was placed before the BPRT to show that the Interested Party was a tenant of the 1<sup>st</sup> Applicant.

5. The other complaint is that even after the 1<sup>st</sup> Applicant had appointed an advocate who filed a notice of appointment of advocate, the Respondent proceeded to issue orders on 14/9/2016 without any evidence to show that the 1<sup>st</sup> Applicant or her advocate had been served.

6. The Applicant contends that the Respondent had no jurisdiction to entertain the matter before him and that her constitutional right to a fair trial was violated as she has been condemned without being heard. The 1<sup>st</sup> Applicant maintains that she does not know the Interested Party and there is no landlord tenant relationship between her and the Interested Party.

7. The Respondent and Interested Party were served. The Interested Party filed a replying affidavit in opposition to the application. He contends that the 1<sup>st</sup> Applicant is estopped from denying that she is his landlord. The Interested Party contends that the Applicant ought to have filed a normal application before the BPRT to stay the orders issued against him and that these proceedings were brought to delay justice.

8. The Interested Party did not place any evidence before the court to prove the tenancy. He did not join the Applicant as a party to the BPRT cause but only sued her agent. The court has considered the matter and finds that the BPRT granted orders which are final in nature without giving the Applicant as the owner of the property an opportunity to be heard.

9. The court grants the orders sought in the application dated 24<sup>th</sup> November 2016. The Interested Party will pay costs to the Applicant.

Dated and delivered in Court on 18th September 2017.

**K. BOR**

**JUDGE**

In the presence of:

Mr. Mwaura for the Applicant

No appearance for the Respondent

Mr V. Owuor- Court Assistant