

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 279 OF 2016

ERFAN RAFIQUE.....PLAINTIFF

VERSUS

GEOFREY MUGAMBI GITUMA (T/A FASHION CENTER).....DEFENDANT

RULING

The preliminary objection filed on 04.05.17 by defendant raises the following grounds:-

- 1) That this Honourable Court has no jurisdiction to hear and determine this suit as the same falls within the tribunal established under cap 301 laws of Kenya.***
- 2) That the prayers sought in the application cannot be granted as the same will be tantamount to granting eviction orders contrary to the law in breach of Rules of Natural Justice.***
- 3) That the suit herein should therefore be struck out with costs.***

Directions were given by this Court for the Preliminary Objection to be argued by way of Written Submissions. The Plaintiff's side did file their Submissions, but not so the Defendant. That notwithstanding, I will still proceed to analyse the merits thereof.

JURISDICTION

Does this Court have jurisdiction to hear the matter?. As rightly submitted by the Plaintiff, a controlled tenancy is provided for under section 2 of Cap 301. The Tenancy agreement between the parties (a copy is availed by Plaintiff) stipulates that the term of the tenancy was to be five years and 3 months. The matter is hence properly before the Court.

Are the orders sought for a violation of the rules of Natural Justice?. This is not a pure point of law. It is a point that invites argument in the realm of facts. The defendant ought to be raising this point as a ground of opposition to the application and not as the Preliminary Objection. The Preliminary Objection fails on this point.

The Preliminary Objection has not succeeded in ground 1 & 2 and it therefore fails in ground three. The same is hereby dismissed with costs to Plaintiff.

DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 4TH DAY OF OCTOBER, 2017

IN THE PRESENCE OF:

CA: Janet

Kevin Gitonga H/B for Kiambi Mungania for Plaintiff

Hon. L.N. MBUGUA

ELC JUDGE