



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**ENVIRONMENT AND LAND DIVISION**

**ELC. MISC. APPL. NO. 101 OF 2014**

**RUFUS MBAYA.....PLAINTIFF/APPLICANT**

**VERSUS**

**M. Y. MALIK**

**T/A FUJI MOTORS (NBI) LTD..... DEFENDANT/RESPONDENT**

**RULING**

Coming up before me for determination is the Chamber Summons dated 10<sup>th</sup> April 2014 in which the Plaintiff/Applicant seeks for orders of temporary injunction pending the hearing of the tribunal case BPRT No. 219 of 2014 restraining the Defendant/Respondent from evicting him out of the property known as L.R. No. 1870/IX/172 Muthithi Road, Westlands (hereinafter referred to as the "suit property").

This Application is premised on the grounds set out on the face of it together with the Supporting Affidavit of the Plaintiff/Applicant sworn on 10<sup>th</sup> April 2014 in which he averred that he has been a tenant on the suit property jointly with the Respondent and another paying rent in the sum of Kshs. 100,000/- out of which his monthly contribution to the rent is Kshs. 30,000/-. He further averred that the Landlord acknowledges the rent payment in the name of the Respondent's company Fuji Motors (Nairobi) Ltd. He further stated that he has been in occupation of the suit property from 2011 and that the Respondent issued him with an eviction notice through his lawyers on 7<sup>th</sup> April 2014. He further disclosed that he has lodged a complaint against the Respondent at the Business Premises Tribunal under BPRT Case No. 219 of 2014 but that despite a Chairperson having been appointed via Gazette Notice No. 713 of 3<sup>rd</sup> February 2014, the Tribunal is not yet sitting. In closing, he stated that the threat of eviction and interruption of his business affairs in the suit property is real and he seeks the protection of this court through the issuance of the temporary injunction.

The Application is uncontested. Despite being duly served with the Application, the Respondent did not file any response.

It is true that at the time this Application was filed, the Chairperson of the Business Premises Rent Tribunal had been appointed but had not commenced sitting, prompting the filing of this Application before this court. However, as at today's date, the Chairperson of the BPRT is now sitting. To that extent therefore, I consider this Application to have been overtaken by events as the relief sought by the Plaintiff/Applicant is for a temporary injunction pending the hearing of BPRT Case No. 219 of 2014.

Arising from this, I hereby dismiss this Application with no order as to costs.

**DELIVERED AND SIGNED AT NAIROBI THIS 23<sup>RD</sup>**

**DAY OF JANUARY 2015.**

**MARY M. GITUMBI**

**JUDGE**